CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 96

DISTRICT OF COLUMBIA, PETITIONER,

vs.

WILLIAM H. COLTS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED APRIL 28, 1930

CERTIORARI GRANTED MAY 26, 1930

(34,988)

( )

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No.

DISTRICT OF COLUMBIA, PETITIONER,

vs.

WILLIAM H. COLTS

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

INDEX

	Original	Print
Proceedings in Court of Appeals of District of Columbia...	1	1
Caption.....(omitted in printing)..	1	
Record from police court of District of Columbia.....	1	1
Docket entries.....	1	1
Information	2	2
Recognizance on writ of error..(omitted in printing)..	4	
Bill of exceptions and order settling same.....	6	3
Assignment of error.....	8	6
Designation of record.....	9	6
Writ of error.....	10	7
Clerk's certificate.....(omitted in printing)..	11	
Argument and submission.....(omitted in printing)..	12	
Opinion, Robb, J.....	14	8
Judgment	22	15
Designation of record.....	23	15
Clerk's certificate.....(omitted in printing)..	24	
Order allowing certiorari.....		17

[fols. a-1] [Caption omitted]

IN POLICE COURT OF THE DISTRICT OF COLUMBIA,

JULY TERM, 1929

McMahon, Judge

No. 172,464

DISTRICT OF COLUMBIA

vs.

WILLIAM H. COLTS

Information for Reckless Driving

DOCKET ENTRIES

Be it remembered, That in the Police Court of the District of Columbia, at the City of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

July 20, 1929.—Information filed; case continued to July 22, 1929. Case continued to August 6, 1929.

August 6, 1929.—Plea Not Guilty. Jury trial demanded. Jury trial not granted. Judgment Guilty. Sentence: To be committed to the Washington Asylum and Jail for the term of Thirty Days. Exceptions noted and notice given of applying to the Court of Appeals for Writ of Error.

Recognizance in the sum of $500 entered into on writ of error to Court of Appeals D. C. upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expira-

[fol. 2] tion of ten days appear in Police Court and abide by and perform its judgment and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises.

I. B. JONES,
Surety.

August 9, 1929.—Bill of Exceptions submitted.

Sept. 5, 1929.—Bill of Exceptions settled, signed, sealed and filed.

Sept. 17, 1929.—Writ of Error received from Court of Appeals.

Sept. 18, 1929.—Assignment of Errors filed. Designation of record filed Sept. 24, 1929. Copy of record and proceedings in this case, together with Writ of Error, transmitted to Court of Appeals in obedience to said writ.

IN POLICE COURT OF THE DISTRICT OF COLUMBIA

INFORMATION

THE DISTRICT OF COLUMBIA, ss:

William W. Bride, Esq., Corporation Counsel, by Stanley DeNeale, Assistant Corporation Counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into Court, and causes the court to be informed, and complains that William H. Colts, late of the District of Columbia, aforesaid, on the 19th day of July, in the year A. D. nineteen hundred and twenty-nine, in the District of Columbia, aforesaid, and on O Street, southeast, and on divers other streets, did then and there operate a certain motor vehicle at a greater rate of speed than twenty-two miles an hour over said public highway recklessly, that is to say at a greater rate of speed than was reasonable and proper, having regard to the width of said public highway, the use thereof, and the traffic thereon, in such manner and condition so as to endanger property and individuals, contrary to and in violation of an Act of Congress, the Traffic Regulations in such case made and provided, and constituting a law of the District of Columbia.

(Signed) William W. Bride, Corporation Counsel,
by S. DeNeale, Assistant Corporation Counsel.

[fol. 3] Personally appeared M. Znamenacek this 20th day of July, A. D. 1929, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

(Signed) C. H. Driscoll, Deputy Clerk, Police Court
of the District of Columbia.

[Endorsed:] McMahon, Judge. Col. Bond. No. 172,464. Information. Traffic. District of Columbia vs. William H. Colts. Address: 415 8th St. S. E. Permit Number: 127,501. Notified to appear in Court at 9. Reckless driving. O'Connell. Witnesses: M. Znamenacek, John E. Coffery, Grant Richardson, Bruce Strong. Filed July 20th, 1929. F. A. Sebring, Clerk Police Court D. C. July 20, 1929, cont. 7/22/29. 300. I. B. Jones. 8/6/29. Rec. cont. to Aug. 6, 1929, 11 A. M. S. DeNeale. 8/6/29, P. N. G. Jury trial demanded. Jury trial not granted. Aug. 6th, 1929, 30 C. days. E. W. H. Exception noted. Intention given of applying to Court of Appeals for writ of error. Bond $500. C. Appeal bond 500. I. B. J. Recognizance in the sum of $500.00 entered into on writ of error to Court of Appeals D. C. upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days appear in Police Court and abide by and perform its judgment and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. I. B. Jones, surety. August 9th, 1929, bill of exceptions submitted. Aug. 21st, 1929, time for signing bill of exceptions extended to Sept. 5th, 1929. Sept. 5th, 1929, bill of exceptions settled, signed, and filed. Sept. 17, 1929, writ of error received from Court of Appeals. Sept. 18, 1929, assignment of errors filed, designation of record filed. Copy of record and proceedings in this case, together with writ of error, transmitted to Court of Appeals in obedience to said writ.

[fols. 4 & 5] Recognizance on writ of error for $500.00, approved and filed August 6, 1929, omitted in printing.

[fol. 6] In Police Court of the District of Columbia

[Title omitted]

Bill of Exceptions and Order Settling Same—Filed Sept. 5, 1929

Be it remembered that upon the trial of this case on the 6th day of August, 1929, before the Honorable John P. Mc-

Mahon in the District of Columbia Branch of the Police Court of the District of Columbia, to maintain the issues on its part joined, the District of Columbia produced the following evidence and the following proceedings were had:

That on the 20th day of July, 1929, an information was filed against the defendant, William H. Colts, by the District of Columbia, in the name of William W. Bride, Corporation Counsel in and for the District of Columbia, which information charged that the defendant, William H. Colts, in the District of Columbia, on the 19th day of July, 1929, did, in the District of Columbia, on O Street, Southeast, and on divers other streets, then and there operate a certain motor vehicle over said public highways recklessly, that is to say at a greater rate of speed than was reasonable and proper, having regard to the width of said public highway, the use thereof, and the traffic thereon, in such manner and condition so as to endanger property and individuals, contrary to and in violation of an Act of Congress in such case made and provided, and constituting a law of the District of Columbia.

That on the 6th day of August, 1929, the defendant was arraigned and entered a plea of not guilty and moved the court that the be tried before a jury, which motion was overruled and an exception noted, and the defendant was thereupon put to trial before the judge without a jury. The Court adjudged the defendant guilty and sentenced him to serve a term of thirty (30) days in the Washington Asylum and Jail in the District of Columbia.

The District of Columbia, to maintain the issue upon its part joined, called as a witness Officer MILES ZNAMENACEK, [fol. 7] of the Metropolitan Police Department of the District of Columbia, who testified substantially:

That his attention was attracted by the defendant driving an automobile north on Anacostia Bridge and attempting to pass to the right of a truck; that the defendant was unable to pass said truck on the right, and then pulled over and passed to the left of said truck; that witness turned around on his motorcycle and pursued defendant; that defendant increased his speed to about thirty-eight (38) miles per hour, zigzagging from one side of the street to the other; that the officer followed, blowing his horn continuously; that at the intersection of Eleventh and O Streets,

Southeast, the defendant turned his automobile to the right into O Street, opened the left door, jumped out of the automobile and ran away; that defendant's automobile continued moving on O Street and collided with a loud crash with a Ford truck which was parked on the south side of O Street, about sixty (60) feet from Eleventh Street, pushing said truck about five (5) feet and damaging a box on the body of said truck; that both front fenders of the Chevrolet automobile driven by defendant were smashed by the collision; that after a considerable chase witness apprehended defendant about a block and a half from the scene of the collision; that eighteen (18) boxes of whiskey were found in the Chevrolet automobile operated by defendant; that defendant stated that his reason for driving as he did was that he was trying to get away.

The District of Columbia, to further maintain the issue upon its part joined, called as a witness Officer BRUCE STRONG, of the Metropolitan Police Department, who testified in substance as follows:

That he was walking south on Eleventh Street, Southeast, when he heard the blowing of a horn and saw defendant's automobile coming north on Eleventh Street just north of Anacostia Bridge; that he could not say how fast defendant's automobile was traveling; that he saw Officer Znamenacek on a motorcycle chasing defendant's automobile; that the defendant continued north in the automobile until he reached O Street, a distance of about a block from the bridge; that witness saw defendant's automobile turn east into O Street and then witness heard a crash and ran around the corner into O Street and saw defendant's automobile [fol. 8] and a truck, with which defendant's automobile had collided; that witness waited upon the scene and shortly thereafter Office Znamenacek appeared with the defendant; that the defendant was placed in the automobile and shortly thereafter was taken to the station house.

This is the substance of all of the evidence, no evidence having been offered on behalf of the defendant.

The Court having found the defendant guilty, the defendant again noted his exception to the refusal of the Court to grant him a jury trial, which is the only exception noted in the case.

The Court hereby certifies that the foregoing is the substance of the proceedings to which exception was duly noted, upon which the defendant was convicted.

The defendant now tenders this, his Bill of Exceptions herein, and prays that the same be signed, sealed, enrolled and made a part of the record in this case nunc pro tunc, this 5th day of September, A. D. 1929, which is accordingly done.

(Signed) John P. McMahon, Judge Police Court, D. C.

[File endorsement omitted.]

IN POLICE COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Sept. 18, 1929

The court erred

1. In refusing the motion of the defendant for a trial by jury.

Whelan & O'Connell, by W. B. O'Connell, Attorneys for Defendant.

[fol. 9] [File endorsement omitted.]

IN POLICE COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed Sept. 18, 1929

The clerk will please make up the record for the Court of Appeals to consist of the following:

1. The information.
2. Plea.

3. Motion for a jury trial.
4. The verdict.
5. Appeal noted.
6. Appeal bond.
7. Bill of Exceptions submitted.
8. Bill of Exceptions.
9. Assignment of Errors.
10. This designation of record.

Whelan & O'Connell, by W. B. O'Connell, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 10] IN POLICE COURT OF DISTRICT OF COLUMBIA

WRIT OF ERROR—Filed Sept. 17, 1929

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable John P. McMahon, Judge of the Police Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police Court, before you, between District of Columbia, Plaintiff, and William H. Colts, Defendant, Information No. 172,464, a manifest error hath happened, to the great damage of the said Defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable George E. Martin, Chief Justice of the said Court of Appeals, the 17th day of September, in the year of our Lord one thousand nine hundred and twenty-nine.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, by Moncure Burke, Deputy Clerk. (Seal Court of Appeals, District of Columbia.)

Allowed by George E. Martin, Chief Justice of the Court of Appeals of the District of Columbia.

[fol. 11] [File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

[fols. 12 & 13] Minute entries of argument and submission January 7 and 8, 1930, omitted in printing.

[fol. 14] IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 5050

WILLIAM H. COLTS, Plaintiff in Error,

vs.

DISTRICT OF COLUMBIA

(Before Martin, Chief Justice, and Robb and Van Orsdel, Associate Justices)

OPINION—Filed Feb. 4, 1930

Mr. Justice ROBB delivered the opinion of the Court:

Writ of error to the Police Court involving the question whether one charged with reckless driving on a city street is entitled to a jury trial.

In an information, it was charged that Colts, on the 19th of July, 1929, "on O Street, Southeast, and on divers other

streets" in the District of Columbia, "did then and there operate a certain motor vehicle at a greater rate of speed than twenty-two miles an hour over said public highway recklessly, that is to say at a greater rate of speed than was reasonable and proper, having regard to the width of said public highway, the use thereof, and the traffic thereon, in such manner and condition so as to endanger property and individuals, contrary to and in violation of an Act of Congress, the Traffic Regulations in such case made and provided, and constituting a law of the District of Columbia."

He requested a trial by jury, which was denied. A trial before the court resulted in his conviction and sentence to thirty days imprisonment.

Section 9 of the District of Columbia Traffic Act of March 3, 1925; 43 Stats. 1119, 1123, as amended by Section 5 of the Act of July 3, 1926; 44 Stats. 812, 814, under the heading "Speeding and Reckless Driving," provides:

"(a) No vehicle shall be operated upon any public highway in the District at a speed greater than twenty-two miles per hour except in such outlying districts and upon such highways as the director may designate. * * *

[fol. 15] "(b) No individual shall operate a motor vehicle over any public highway in the District (1) recklessly; or (2) at a rate of speed greater than is reasonable and proper, having regard to the width of the public highway, the use thereof, and the traffic thereon; or (3) so as to endanger any property or individual; or (4) so as unnecessarily or unreasonably to damage the public highway.

"(c) Any individual violating any provision of this section where the offense constitutes reckless driving shall, upon conviction for the first offense, be fined not less than $25 nor more than $100 or imprisoned not less than 10 days nor more than 30 days; and upon conviction for the second or any subsequent offense such individual shall be fined not less than $100 nor more than $1,000, and shall be imprisoned not less than 30 days nor more than one year, and the clerk of the court shall certify forthwith such conviction to the director, who shall thereupon revoke the operator's permit of such individual.

"(d) Any individual violating any provision of this section, except where the offense constitutes reckless driving,

shall, upon conviction for the first offense, be fined not less than $5 nor more than $25; upon conviction for the second offense, such individual shall be fined not less than $25 nor more than $100; upon conviction for the third offense or any subsequent offense such individual shall be fined not less than $100 nor more than $500, and shall be imprisoned not less than 30 days nor more than one year, and the clerk of the court shall certify forthwith such conviction to the director, who shall thereupon revoke the operator's permit of such individual."

Section 1 of the Code of Laws for the District of Columbia continues in force here "The common law, all British statutes in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, * * * except insofar as the same are inconsistent with, or are replaced by, some provision of this code."

It is the contention of counsel for the District that the offense charged against Colts "was not the common law offense of reckless driving and that therefore his trial without a jury was authorized under Section 44 of the D. C. Code [fol. 16] as amended by Section 4 of the Traffic Act of March 3, 1925; 43 Stats. 1119." That section, as amended, reads as follows:

"That prosecution in the police court shall be on information by the proper prosecuting officer. In all prosecutions within the jurisdiction of said court in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury, unless the accused shall in open court expressly waive such trial by jury and request to be tried by the judge, in which case the trial shall be by such judge, * * *

"In all cases where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury, unless in such of said last-named cases wherein the fine or penalty may be more than $300, or imprisonment as punishment for the offense may be more than ninety days, the accused shall demand a trial by jury, in which case the trial shall be by jury. * * *"

It was an indictable offense at common law amounting to a breach of the peace, to drive "a carriage over a crowded

or populous street, at such a rate or in such a manner as to endanger the safety of the inhabitants." United States v. Hart, 1 Pet. C. C. 390, 392. Bowles v. District of Columbia, 22 App. D. C. 321, 323. The opinion in the Hart Case was written by Mr. Justice Washington.

The information in the present case charged Colts with operating a motor vehicle on one of the public streets of the District "recklessly * * * in such manner and condition so as to endanger property and individuals." He was, therefore, charged with an offense indictable at common law and amounting to a breach of the peace.

The third article of the Constitution provides that "the trial of all crimes, except in cases of impeachment, shall be by jury." It becomes necessary to determine whether the offense charged in this case is a "crime" within the meaning of the Constitution.

In Callan v. Wilson, 127 U. S. 540, 557, the court said:

"The third article of the Constitution provides for a jury [fol. 17] in the trial of 'all crimes, except in cases of impeachment.' The word 'crime' in its more extended sense, comprehends every violation of public law; in a limited sense, it embraces offenses of a serious or atrocious character. In our opinion, the provision is to be interpreted in the light of the principles which, at common law, determined whether the accused, in a given class of cases, was entitled to be tried by a jury. It is not to be construed as relating only to felonies, or offenses punishable by confinement in the penitentiary. It embraces as well some classes of misdemeanors, the punishment of which involves or may involve the deprivation of the liberty of the citizen." After a review of authorities, the court continues: "Without further reference to the authorities, and conceding, that there is a class of petty or minor offenses, not usually embraced in public criminal statutes, and not of the class or grade triable at common law by a jury, and which, if committed in this District, may, under the authority of Congress, be tried by the Court and without a jury, we are of opinion that the offense with which the appellant is charged does not belong to that class. A conspiracy such as is charged against him and his codefendants is by no means a petty or trivial offense. * * * Except in that class or grade of offenses called petty offenses, which, according to the common law, may be proceeded against summarily in any tri-

bunal legally constituted for that purpose, the guarantee of an impartial jury to the accused in a criminal prosecution, conducted either in the name, or by or under the authority of, the United States, secures to him the right to enjoy that mode of trial from the first moment, and in whatever court, he is put on trial for the offense charged."

In Schick v. The United States, 195 U. S. 65, Schick had been proceeded against by information to recover a penalty of $50 for knowingly purchasing or receiving for sale oleomargarine which had not been branded or stamped according to law. The question considered by the court, although not raised by Schick, was whether the waiver of a jury at the trial of the case was in conflict with the laws and Constitution of the United States. The court held that it was not, saying: "It will be noticed that the section character- [fol. 18] izes the act prohibited as an offense, and subjects the party to a penalty of fifty dollars. So small a penalty for violating a revenue statute indicates only a petty offense. *It is not one necessarily involving any moral delinquency.* (Italics ours.) The violation may have been the result of ignorance or thoughtlessness, and must be classed with such illegal acts as acting as an auctioneer or peddler without a license, or making a deed without affixing the proper stamp. That by other sections of this statute more serious offenses are described and more grave punishments provided does not lift this one to the dignity of a crime. Not infrequently a single statute in its several sections provides for offenses of different grades, subject to different punishments, and to prosecution in different ways. * * * This very statute furnishes an illustration. By one clause the knowingly selling of adulterated butter in any other than the prescribed form subjects the party convicted thereof to a fine of not more than one thousand dollars and imprisonment for not more than two years. An officer of customs violating certain provisions of the act is declared guilty of a misdemeanor and subject to a fine of not less than one thousand dollars nor more than five thousand dollars, and imprisonment for not less than six months nor more than three years. Obviously these violations of certain provisions of the statute must be classed among serious criminal offenses, and can be prosecuted only by indictment, while the violations of the statute in the cases

before us were prosecuted by information. *The truth is, the nature of the offense and the amount of punishment prescribed rather than its place in the statutes determine whether it is to be classed among serious or petty offenses, whether among crimes or misdemeanors.* (Italics ours.) Clearly both indicate that this particular violation of the statute is only a petty offense."

It thus appears that in the Callan Case it was ruled that the Constitutional provision for trial by jury "is to be interpreted in the light of the principles which at common law determined whether the accused in a given class of cases was entitled to a trial by jury"; that there is a class or grade of minor offenses not triable at common law by jury that may be proceeded against summarily in any [fol. 19] tribunal legally constituted for that purpose. In the Schick Case, it was pointed out that a penalty of $50 for violating a revenue statute "indicates only a petty offense", and that "it is not one necessarily involving any moral delinquency." The real test as to the grade of the offense, the court ruled, is "the nature of the offense and the amount of punishment prescribed."

The offense charged against Colts was not triable summarily at common law, being indictable. Blackstone 4 Com. 280, 281; State v. Glenn, 54 Md. 572, 600, where it was said that it has been a constant course of legislation in England "for centuries past, to confer summary jurisdiction upon justices of the peace for the trial and conviction of parties for minor and statutory police offenses."

That the common law offense of reckless driving is a crime within the Constitutional provision for a trial by jury is, we think, plain. Has the inherent character of that offense been changed by the statutory provision reducing the penalty for a first offense to a fine of not more than $100 or imprisonment of not more than thirty days? We think not. This offense being malum in se necessarily involves moral delinquency. It would be so "adjudged by the sense of a civilized community, whereas an act malum prohibitum is wrong only because made so by statute." State v. Horton, 139 N. C. 588, 592. One convicted of driving a vehicle in a crowded street so recklessly as to endanger human life would merit and receive the lasting condemnation of all right thinking people, and thus suffer greater punishment

than that prescribed by law. If by statute the grade of this serious common law crime can be changed to a petty offense, then it necessarily follows, we think, that in the same way the grade of the crime of murder, or any other crime, could be changed to a petty misdemeanor. The inevitable result would be the nullification of the Constitutional guaranty of trial by jury.

It would be an anomalous situation indeed if in a civil suit against Colts in the District of Columbia involving more than twenty dollars he could demand a jury trial as of right (7th Amendment) and yet could be deprived of that privilege in a prosecution for a common law offense involving his reputation and liberty.

[fol. 20] We repeat, it is the inherent nature or character of the offense, as well as the punishment prescribed, that should determine its class or grade, that is, whether it is a crime in the Constitutional sense or a petty offense. The Traffic Act under consideration furnishes an apt illustration. The provision that no vehicle shall be operated at a greater rate of speed than twenty-two miles per hour, except in outlying districts, etc., defines a mere police offense —a creation of the statute. U. S. v. Cella, 37 App. D. C. 433, 435. A violation of that provision would not necessarily involve any moral delinquency. That this was recognized by Congress is apparent from the fact that the penalty for a first offense was fixed at a fine of not less than $5 nor more than $25. Clearly, violation of such a statute must be classed as a petty offense subject to summary prosecution before a court without a jury.

In answer to the suggestion that it would be more convenient to try all cases involving traffic law violations before a court without a jury we quote the prophetic words of Blackstone when referring to summary proceedings authorized by acts of Parliament, as follows:

"And, however convenient these may appear at first (as doubtless all arbitrary powers, well executed, are the most convenient) yet let it be again remembered, that delays and little inconveniences in the forms of justice are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our Constitution; and that though begun in trifles, the

precedent may gradually increase and spread, to the utter disuse of juries in questions of the most momentous concern." Bk. 4, c. 27, 350.

Inasmuch as the punishment in the instant case is not infamous; U. S. v. Moreland, 258 U. S. 433, and a trial by jury may now be had in the Police Court; 43 Stats. 1119, the judgment will be reversed with costs and the cause remanded for a new trial.

Reversed.

[fol. 21] [File endorsement omitted.]

[fol. 22] In Court of Appeals of District of Columbia, January Term, 1930

No. 5050

William H. Colts, Plaintiff in Error,

vs.

District of Columbia

Judgment—Feb. 4, 1930

In Error to the Police Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Police Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Police Court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said Police Court for a new trial.

Per Mr. Justice Robb, February 4, 1930.

[fol. 23] In Court of Appeals of the District of Columbia

[Title omitted]

Designation of Record—Filed Feb. 10, 1930

The Clerk of the Court of Appeals will please include the following on petition for certiorari to the Supreme

Court of the United States in the designation of record in this case:

1. The printed record in the Court of Appeals.
2. Argument of cause.
3. Opinion of the Court.
4. The judgment.
5. This designation.

William W. Bride, William W. Bride, Corporation Counsel, D. C. Robert E. Lynch, Robert E. Lynch Assistant Corporation Counsel, D. C., Attorneys for the District of Columbia.

Service of the above designation of record acknowledged this 10th day of February, 1930.

William O'Connell, Attorney for William H. Colts.

[File endorsement omitted.]

[fol. 24] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 26, 1930

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

APR 28 19

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. ~~[illegible]~~ 96

DISTRICT OF COLUMBIA, PETITIONER,

v.

WILLIAM H. COLTS.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

WILLIAM W. BRIDE,
Corporation Counsel, D. C.

ROBERT P. REEDER,
ROBERT E. LYNCH,
Of Counsel.

INDEX.

Subject Index.

	Page
Petition:	
Statement	2
Question presented	2
Specification of errors to be urged	3
Reasons for granting the writ	3
Brief in support of petition:	
Opinion below	5
Jurisdiction	5
Statement	5
Provisions of Constitution and of statutes involved	5
Argument:	
I. This court has said repeatedly that the Constitution does not require the trial of petty offenses by jury	7
II. This court has not laid down any precise test of petty offenses	10
III. Decisions of State courts support the position that an offense such as is here involved, for which the maximum punishment is a fine of one hundred dollars or imprisonment for one month, may be tried by summary procedure	10
IV. Congress has treated reckless driving as a petty offense and has properly done so	13
V. Conclusion	14

Citations.

Cases:	
Bell v. State, 104 Neb., 203	12
Bray v. State, 140 Ala., 172	11
Byers v. Commonwealth, 42 Pa. St., 89	13
Callan v. Wilson, 127 U. S., 540	8
Caruso v. Porter, N. J., 130 Atl., 805	12
Lancaster v. State, 90 Md., 211	11
Latimer v. Wilson, 103 N. J. L., 159	12
Palmer v. Lenovitz, 34 App. D. C., 303	9
Patton v. United States, No. 53, October Term, 1929	9

Page

People v. Craig, 195 N. Y., 190 10
People v. Harding, 189 N. Y. Supp., 657 12
People v. Stein, 80 App. Div., 357 13
Schick v. United States, 195 U. S., 65 8
State v. Anderson, 165 Minn., 150 11
State v. Broms, 139 Minn., 402 11
State v. Buchanan, 5 Harris and Johnson, 317 8
State v. Glenn, 54 Md., 572 11
State v. Parker, 87 Fla., 181 11
State v. Ruhe, 24 Nev., 251 12
United States v. Marshall, 17 D. C., 34 8

Constitution of United States:

Article III, Sec. 2, Cl. 3 5
Sixth Amendment 5

Statutes:

District of Columbia Code, Sec. 44 6
District of Columbia Traffic Act, 43 Stat., 1119 6
Act of July 3, 1926, C. 739, 44 Stat., 812 7
Rev. Stat. Dist. of Col., Sec. 92 8
Rev. Stat. Dist. of Col., Sec. 1049 8
Rev. Stat. Dist. of Col., Sec. 1144 8
Laws of New Jersey, 1924, C. 211, p. 458 12

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No.

DISTRICT OF COLUMBIA, PETITIONER,

v.

WILLIAM H. COLTS.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

PETITION.

The Corporation Counsel, on behalf of the District of Columbia, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia entered in the above-entitled cause on February 4, 1930, reversing the judgment of the Police Court for the District of Columbia.

Statement.

On July 20, 1929, an information was filed in the Police Court charging that the respondent:

> On the 19th day of July, 1929, in the District of Columbia, on O Street Southeast, * * * did then and there operate a certain motor vehicle at a greater rate of speed than twenty-two miles an hour over said public highway recklessly, that is to say, at a greater rate of speed than was reasonable and proper, having regard to the width of said public highway, the use thereof, the traffic thereon, and in such manner and condition so as to endanger property and individuals. * * *

This offense is generally referred to as "reckless driving." The respondent pleaded not guilty and demanded a trial by jury, which demand was denied and an exception noted. Upon a trial by the court he was convicted and sentenced to the Washington Asylum and Jail for a term of thirty days.

There was sufficient proof to sustain the charge alleged in the information (R. 4, 5). No evidence was offered on behalf of the respondent.

Question Presented.

The sole question presented in this case is whether or not the Constitution gave to the respondent the right to a trial by jury.

Specification of Errors to be Urged.

The Court of Appeals erred:

1. In holding that the respondent was entitled to a trial by jury.

2. In holding that the offense of reckless driving as defined and punished in the District of Columbia Traffic Act is not a petty offense within the meaning of the Constitution.

Reasons for Granting the Writ.

The question involved in this case is of great importance to the District of Columbia in the enforcement of traffic regulations, and may be of even greater importance throughout the country if Congress seeks more expeditious enforcement of the laws against minor offenses. The annual reports of the Commissioners of the District of Columbia show that more than fifteen hundred persons were charged with reckless driving in the District of Columbia in the fiscal year of 1928, and that nearly seventeen hundred persons were charged with that offense in the fiscal year of 1929. The requirement of trial by jury in such cases would seriously impede the effective administration of this and similar laws.

A test as to what constitutes a petty offense should be established by this Court.

This Court should determine whether offenses such as reckless driving are to be classed as "crimes," and

trials therefor as "criminal prosecutions," thereby entitling one to a trial by jury.

Wherefore, it is respectfully requested that this petition for a writ of certiorari to review the judgment of the Court of Appeals of the District of Columbia be granted.

WILLIAM W. BRIDE,
Corporation Counsel.

APRIL, 1930.

BRIEF IN SUPPORT OF PETITION.

Opinion Below.

No opinion was rendered by the Police Court. The opinion of the Court of Appeals (R. 8) is printed in 58 Washington Law Reporter, 88.

Jurisdiction.

The judgment of the Court of Appeals of the District of Columbia was entered on February 3, 1930. The jurisdiction of this Court to issue the writ applied for is invoked under Section 240 (*a*) of the Judicial Code as amended by the Act of February 13, 1925.

Statement.

A statement of the facts and of the errors relied on will be found in the petition.

Provisions of Constitution and of Statutes Involved.

Article III, section 2, clause 3, of the Constitution provides:

> The trial of all crimes, except in cases of impeachment, shall be by jury. * * *

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. * * *

Paragraph 1, of Section 44 of the Code of the District of Columbia, provides as follows:

> That prosecutions in the police court shall be on information by the proper prosecuting officer. In all prosecutions within the jurisdiction of said court in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury, unless the accused shall in open court expressly waive such trial by jury and request to be tried by the judge, in which case the trial shall be by such judge, and the judgment and sentence shall have the same force and effect in all respects as if the same had been entered and pronounced upon the verdict of a jury.

The District of Columbia Traffic Act, 1925 (Act of March 3, 1925, c. 443, 43 Stat. 1119), provides as follows:

> SEC. 4. The second paragraph of section 44 of the District of Columbia Code is hereby amended to read as follows: "In all cases where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury, unless in such of said last-named cases wherein the fine or penalty may be more than $300, or imprisonment as punishment for the offense may be more than ninety days, the accused shall demand a trial by jury, in which case the trial shall be by jury * * *."
>
> SEC. 6 (*e*). (Added by the Act of July 3, 1926, c. 739, sec. 4, 44 Stat. 812, 814.) All prosecu-

tions for violations of provisions of this Act, excepting section 11 only thereof, and all amendments to the said Act or regulations authorized and promulgated under the authority of said Act and amendments thereto, shall be in the police court of the District of Columbia by information filed by the corporation counsel of the District of Columbia or any of his assistants: *Provided,* That nothing herein contained shall deprive any person of the right of trial by jury.

SEC. 9. (As amended by the Act of July 3, 1926, c. 739, sec. 5, 44 Stat. 812, 814.)

(*b*) No individual shall operate a motor vehicle over any public highway in the District (1) recklessly; or (2) at a rate of speed greater than is reasonable and proper, having regard to the width of the public highway, the use thereof, and the traffic thereon; or (3) so as to endanger any property or individual; or (4) so as unnecessarily or unreasonably to damage the public highway.

(*c*) Any individual violating any provision of this section where the offense constitutes reckless driving shall, upon conviction for the first offense, be fined not less than $25 nor more than $100 or imprisoned not less than 10 days nor more than 30 days. * * *

ARGUMENT.

I.

This Court has said repeatedly that the Constitution does not require the trial of petty offenses by jury.

In *Schick* v. *United States,* 195 U. S. 65, where the court sustained the waiver of a jury in a trial where the maximum punishment was a fine of fifty dollars, the court declared that the provisions of the Constitution for trial by jury did not extend to petty offenses, saying (pp. 68, 70):

> The truth is, the nature of the offense and the amount of punishment prescribed rather than its place in the statutes determine whether it is to be classed among serious or petty offenses. * * *
>
> When the change was made from "criminal offenses" to "crimes," and made in the light of the popular understanding of the meaning of the word "crimes," as stated by Blackstone, it is obvious that the intent was to exclude from the constitutional requirement of a jury the trial of petty criminal offenses.

In *Callan* v. *Wilson,* 127 U. S. 540, the Police Court of the District of Columbia had tried a defendant who was charged with conspiracy and had denied him a jury in spite of his demand for one. This Court reversed the decision of the lower court. The sentence which was actually imposed in that case was a light one; but under the common law which was then in force in the District of Columbia (Rev. Stat. Dist. Col., sec. 92; *State* v. *Buchanan,* 5 Harris & Johnson (Md.) 317, 360) conspiracy was a misdemeanor which might have been punished by imprisonment which was at the discretion of the court and was not limited to one year (Rev. Stat. Dist. Col., secs. 1144, 1049; *United States* v. *Marshall,* 17 D. C. 34; *Palmer* v.

Lenovitz, 34 App. D. C. 303, 305). The defendant, therefore, was tried without a jury, against his protest, for an offense for which he might have been sentenced to imprisonment for a number of years at the discretion of the court. Congress had not attempted to change the common law as to the substantive offense and the punishment therefor. It was in such a case that the Court declared (p. 549) that the provision in Article III for trial by jury must be interpreted in the light of the principles which, at common law, determined whether the accused, in a given class of cases, was entitled to be tried by jury, and said that he was entitled to be so tried not only in cases of felony but also in some classes of misdemeanors, and that (p. 555):

> Without further reference to the authorities, and conceding, that *there is a class of petty or minor offenses, not usually embraced in public criminal statutes, and not of the class or grade triable at common law by a jury, and which, if committed in this District, may, under the authority of Congress, be tried by the court and without a jury,* we are of opinion that the offense with which the appellant is charged does not belong to that class. (Italics ours.)

In *Patton et al.* v. *United States,* No. 53, October Term, 1929, decided April 14, 1930, this Court said:

> Trial by jury is the normal and, with occasional exceptions, the preferable mode of disposing of issues of fact in criminal cases *above the grade of petty offenses.* (Italics ours.)

II.

This Court has not laid down any precise test of petty offenses.

As already shown, this Court has indicated that the extent of the punishment and the nature of the offense are factors to be considered in determining whether or not an offense is petty. But the Court did not decide that the common law determines conclusively whether an offense is or is not petty. It did not deny the power of Congress to decide that an offense which was regarded as serious and was punished heavily in colonial times or in England of the seventeenth or eighteenth century should be regarded less seriously and punished more lightly at the present time. "It is not the mere name of a crime but the punishment therefor that characterizes it" (*People* v. *Craig*, 195 N. Y. 190, 197). There is nothing in the decisions of this Court which denies the power of Congress to erect its own standards as to the seriousness of offenses at the present day, to limit the punishment accordingly, and to order the trial of an offense which it regards as petty by summary procedure.

III.

Decisions of State courts support the position that an offense such as is here involved, for which the maximum punishment is a fine of one hundred dollars or imprisonment for one month, may be tried by summary procedure.

In *Bray* v. *State* (1903), 140 Ala. 172, a defendant was denied a jury in a prosecution for violation of an ordinance which punished failure to pay hack fare. He was convicted and sentenced to six months at hard labor. Trial without jury was sustained.

In *State* v. *Parker* (1924), 87 Fla. 181, an ordinance forbade any one to operate an automobile while intoxicated, under penalty of imprisonment for not less than thirty nor more than sixty days for the first offense. The defendant was tried by the municipal court without the right to trial by jury. He was found guilty and sentenced to imprisonment for thirty days. Trial without jury was sustained.

In *State* v. *Glenn* (1880), 54 Md. 572, an habitually disorderly person was tried without a jury and sentenced to six months in the house of correction. The trial was sustained. See especially pages 599 to 606. In *Lancaster* v. *State* (1899), 90 Md. 211, a statute authorized police justices to try for assaults without jury. The statute was held valid. The sentence was eighteen months imprisonment.

In *State* v. *Broms* (1918), 139 Minn. 402, the defendant was prosecuted under an ordinance for disorderly conduct, was convicted and sentenced to hard labor for ninety days. The court held that he was not entitled to a jury trial. In *State* v. *Anderson* (1925), 165 Minn. 150, the court decided that one who was accused of selling intoxicating liquor unlawfully in violation of an ordinance was not entitled to trial by jury. In that case the defendant was sentenced to imprisonment for ninety days.

In *Bell* v. *State* (1920), 104 Neb. 203, a State law forbade the possession and transportation of intoxicating liquors; magistrates and police courts were empowered to try without jury all violations of that act and all violations of ordinances where the penalty did not exceed a fine of one hundred dollars or imprisonment for three months. The statute was sustained.

In *State* v. *Ruhe* (1898), 24 Nev. 251, in *quo warranto* proceedings the court sustained a statute which provided that trials for the infraction of ordinances of a police nature should be summary in character before the police judge without a jury. By statute the jurisdiction of the police judge included cases in which he might impose fine or imprisonment or both.

In *Caruso* v. *Porter* (N. J. Sup., 1925), 130 Atl. 805, the court sustained Laws 1924, c. 211 p. 458, which provided that persons accused of driving automobiles while intoxicated should be tried before a recorder without jury (with appeal to court of common pleas and trial *de novo*) and, if convicted, punished by imprisonment of not less than thirty days nor more than six months in the county jail or workhouse. This law was sustained. In the case then before the court the defendant had been sentenced to jail. In *Latimer* v. *Wilson* (1926), 103 N. J. L. 159, the act cited above was sustained by the Court of Errors and Appeals. There the sentence was to thirty days in the county jail.

In *People* v. *Harding* (1921), 189 N. Y. Supp. 657, the court held that one who is accused of vagrancy is not entitled to trial by jury even though upon conviction he might be sentenced to three years in a correctional

institution or to one year in a jail or penitentiary. See also *People* v. *Stein* (1903), 80 App. Div. 357.

In *Byers and Davis* v. *Commonwealth* (1862), 42 Pa. St. 89, an act authorized the mayor or police magistrate to try a professional thief or pickpocket who frequented designated places for an unlawful purpose and if he were found guilty to commit him to hard labor in the county jail for not more than ninety days. The defendants were tried without a jury, were convicted, and were sentenced to hard labor in jail for ninety days. The act was sustained. See especially pages 94 to 96.

IV.

Congress has treated reckless driving as a petty offense and has properly done so.

The offense of reckless driving was not created in a criminal statute but by the Traffic Act of 1925, which deals simply with local traffic conditions. The offense is a common one. In a city of scarcely more than five hundred thousand inhabitants there are almost seventeen hundred charges of reckless driving tried before this one court in a single year. And, as shown by the State cases which have been cited, the maximum punishment for a violation of this portion of the act is relatively light. In view of these circumstances a charge of reckless driving may properly be tried without a jury.

V.

Conclusion.

The writ of certiorari should be granted.

Respectfully submitted,

WILLIAM W. BRIDE,
Corporation Counsel.

ROBERT P. REEDER,
ROBERT E. LYNCH,
Of Counsel.

APRIL, 1930.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 96

DISTRICT OF COLUMBIA, PETITIONER,
v.
WILLIAM H. COLTS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE DISTRICT OF COLUMBIA

WILLIAM W. BRIDE
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ROBERT E. LYNCH
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ROBERT P. REEDER
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INDEX

	Page
Opinion Below	1
Jurisdiction	1
Question Presented	2
Provisions of Constitution and of Statutes	2
Statement of Facts	4
Specification of Errors to be Urged	5
Summary of Argument	5
Argument	6
I. The respondent had no right to trial by jury in this case unless the Constitution gave him that right	9
II. This Court has declared that Congress may require the trial of petty offenses without a jury, but it has not shown the scope of the term "petty offenses"	9
III. Before the Constitution was adopted there were many offenses, both in England and in America, in the trial for which no jury was allowed. These included not only offenses which might be punished by fines, but many others in which corporal punishment or imprisonment might be imposed	14
IV. Article III and the Sixth Amendment established the right to trial by jury in criminal prosecutions; but there is nothing in the terms used or in the circumstances or discussions attending their adoption which shows a requirement of trial by jury more comprehensive than was observed throughout the States at the time	26
V. Decisions of many State Courts support the position that an offense such as is here involved, for which the maximum punishment is a fine of one hundred dollars or imprisonment of thirty days, may be tried by summary procedure	29
VI. The offense of reckless driving in the District of Columbia, as defined in the Traffic Act, is a municipal offense notwithstanding the fact that the law was enacted by the Congress of the United States, Congress has properly treated reckless driving as a petty offense	37
Conclusion	46

CITATIONS

Cases:

	Page
Baldwin v. Philadelphia, 99 Pa. 170	39
Bell v. State of Nebraska (1920) 104 Neb. 203	33
Bray v. State (1903) 140 Ala. 172	30
Byers and Davis v. Commonwealth (1862), 42 Pa. St. 89	31
Callan v. Wilson (1888) 127 U. S. 540	9,11,12, 13
Camp. Phosphate Co. v. Anderson, 48 Fla. 226, 37 South. Rep. 722	30
Commonwealth v. Andrews, 211 Penna. St. 110	34
Duffy v. The People, 6 Hill's Rep. 75, 78	21, 32
Goddard v. State, 12 Conn. 448	34
Inwood v. State, 42 Ohio St. 186	34
Kirkland v. State, 72 Ark. 171	34
Latimer v. Wilson (1926) 103 N. J. L. 159	34
McGear v. Woodruff, 22 N. J. Law 213	35
Mackin v. U. S., 117 U. S. 348	40
Metropolitan R. Co. v. District of Columbia, 132 U. S. 1, 33 L. ed. 231, 10 Sup. Ct. Rep. 9	38
Murphy v. People (1824) 2 Cow. 815	21
Palmer v. Lenovitz, 35 App. D. C. 303, 305	12
People ex rel. Cosgriff v. Craig (1909) 195 N. Y. 190	22
People v. Cosmo, 205 N. Y. 91, 98 N. E. 408, 39 L. R. A. (N. S.) 967	32
People v. Craig, 195 N. Y. 190, 197	13, 22
People v. Harding (1921) 189 N. Y. Supp. 657	31
People v. Justices of Court of Special Sessions, 74 N. Y. 406	21, 32
People ex rel. Murray v. Justices (1878) 74 N. Y. 406	21
Ruff v. Georgia, S. & F. R. Co., 67 Fla. 224, 64 South. Rep. 782	30
Rutherford v. Swink, 96 Tenn. 564, 35 S. W. 554	39
Shick v. United States (1904) 195 U. S. 65	11, 13
State v. Anderson (1925) 165 Minn. 150	31
State v. Broms (1918) 139 Minn. 402	30
State v. Buchanan (Md., 1821) 5 Harris & Johnson, 317, 360	12
State v. Glenn (1880), 54 Md. 572	35
State v. Kennan, 25 Wash. 621	34
State v. Parker (1924) 87 Fla. 181	29
Tims v. State, 26 Ala. 165	34
United States v. Cella, 37 App. D. C. 433	38
U. S. v. Hart, 1 Pet. c.c. 390	42
United States v. Marshall, (1887) 17 D. C. 34	12
United States v. Moreland, 258 U. S. 433	12, 41
Van Swartow v. Commonwealth, 24 Penna. Stat. 131	34
Ex parte Wilson, 114 U. S. 417	40, 44

United States Constitution:

Article III, Section 2, clause 3, Constitution	2
Sixth Amendment to the Constitution	28

United States Statutes:

Act of March 3, 1901, c. 854 (31 Stat. 1189)	6
Act of March 3, 1925, c. 443 (43 Stat. 1119)	3

United States Statutes—Continued. Page

Act of July 3, 1926, c. 739, Sec. 4 (44 Stat. 812, 814) 3, 7
Sec. 44 of the Dist. of Col. Code 2, 3
Sec. 869b of the Dist. of Col. Code 38
Sec. 932 of the Dist. of Col. Code 37
Sec. 240 (a) Judicial Code 1
Rev. Stat. Dist. Col., Sec. 92 12
Rev. Stat. Dist. Col., Secs. 1049, 1054 12
Rev. Stat. Dist. Col., Sec. 1144 12

State Constitutions:

Florida 30
Maryland:
Declaration of Rights of 1776, Sec. 3 24
Massachusetts:
Declaration of Rights, Art. 12 19
Nebraska:
Art. 1, Sec. 6 34
New Hampshire:
(1784) Sec. 15 17
New York:
(1777) Art. XLI 21
North Carolina:
1776 25
Pennsylvania:
Declaration of Rights, (1776) Sec. 9 22

State Statutes:

Georgia, Colonial Records of, Volumes 18 and 19 25
Maryland Archives, I, 53, Act of 1638/9 23
Maryland Archives, 1704, 26 Archives, 261 23
Maryland Archives, 1717, 33 Archives, 112 23
Maryland (1723, 34 Archives, 732) 23
Maryland (1723, 34 Archives, 731) 23
Maryland Session Laws (1747, 9) 24
Maryland Session Laws (1748, 21) 23
Maryland Session Laws (1753, 2) 24
Maryland Session Laws (1780, June session, c. 14, Sec. 77) 24
Maryland Session Laws (1785, c. 29, Sec. 5) 24
Maryland Session Laws (1787, c. 11, Sec. 16) 24
Maryland Session Laws (1787, c. 16, Sec. 16) 24
Maryland Session Laws (1788, c. 14, Secs. 15, 16, 17, c. 15, Secs. 16, 18 24
Records of the Colony of Massachusetts Bay, Shurtleff, I, 74, 75.. 17
Massachusetts Province Laws 1693, c. 9, Acts and Resolves, I, 122 17
Massachusetts Laws 1699, I, 378 18
Massachusetts Laws 1705-6, c. 5, Sec. 6, Acts and Resolves, I, 573 18

State Statutes—Continued. Page

Massachusetts Laws 1711, I, 679, 681 18
Massachusetts Laws 1711-12, c. 6, Sec. 13, I, 679, 681 18
Massachusetts Laws 1720, II, 185 18
Massachusetts Laws 1720, II, 182 18
Massachusetts Laws 1731, II, 579 18
Massachusetts Laws 1731, II, 599 18
Massachusetts Laws 1731, II, 700 19
Act of 1753, III, 645 19
Act of 1756, III, 997 18
Act of 1761, IV, 462 18
Act of 1765, IV, 763 18
Act of 1770, V, 46 18
Act of 1774, V, 301 19
Act of 1777 (V, 626) 19
Act of May 8, 1781, c. 10 18
Act of March 15, 1785, c. 33, p. 263 19
Act of February 28, 1787, c. 16, pp. 579, 586 19
Act of March 26, 1788, c. 21, p. 680 18
Nebraska Laws of 1917, Chap. 187, Sec. 55 33
Laws of New Hampshire (Act of June 14, 1701, I, 676) 16
Laws of New Hampshire (1714, II, 138) 16
Laws of New Hampshire (1718, II, 266) 16
Laws of New Hampshire (1740/1, II, 585) 16
Laws of New Hampshire (1747, III, 29) 16
Laws of New Hampshire (1754, III, 72) 16
Laws of New Hampshire (1754, V, 691) 16
Laws of New Hampshire (1768, III, 514) 16
Laws of New Hampshire (1771, III, 564) 16
Laws of New Hampshire (1777, IV, 75) 16
Laws of New Hampshire (1778, IV, 183) 16
Laws of New Hampshire (1791, V, 651) 16
Laws of New Hampshire (1785, V, 75) 16
Colonial Laws of New York, (1665, I, 47) 20
Laws of New York, (1721, II, 56) 20
Laws of New York, (1732, II, 745) 20
Laws of New York, (1744, III, 377) 21
Act of 1785, (c. 40) 21
Act of 1787, (c. 15, Sec. 21) 21
Act of 1788, (c. 31) 21
North Carolina By-Laws 1770, c. 10, Sec. 2, 23 Rec. at 802 24
Pennsylvania Charter and Laws (1682, 107 et seq.) 22
Act of 1702 (Stat. at L. of Pa. II, c. 44) 22
Act of 1767 (VII, c. 552) 22
Act of 1767 (VII, c. 555) 22
Frame of Government, Sec. 25 22
Act of 1777 (IX, c.c. 737, 739) 22
Rhode Island, Acts of September, 1790 20

British Statutes: Page

2 Broom and Had. Com. 476 36
13 and 14 Car. II, c. 15 15
5 Elizabeth, c. 4, Sec. 21 14
5 Elizabeth, c. 15 14
43 Elizabeth, c. 7 15
1 George I, Stat. 2, c. 48 15
5 George 4, Chap. 83 36
6 George I, c. 16 15
9 George II, c. 35, Sec. 18 15
15 George II, c. 33, Sec. 6 15
17 George II, c. 5 15
Magna Charta of King John, Art. 46 35
Magna Charta of 9 Hen. 3, Ch. 29 35
1 and 2 Victoria, Chap. 38 36
31 and 32 Victoria, Chap. 52 36
32 and 33 Victoria, Chap. 99 36

Miscellaneous:

Annals of Congress, I, 435, 450, 464, 703, 707, 756, 759, 760, 778.. 29
Bacon's Justice Abr. 36
Bishop on Criminal Law, 9th ed., I, 452 12
4 Blackistone Com. 280 ..... 14, 36
Burn's Justice 36
Colonial Act of 1st Sept., 1744 33
Commissioners of the District of Columbia, Report for year ending June 30, 1929, page 14 37
67 Cong. Rec., pt. 9, p. 10184 8
67 Cong. Rec., pt. 11, p. 11799 8
67 Cong. Rec., pt. 11, p. 12315 8
67 Cong. Rec., pt. 11, p. 12315-17 8
Elliot's Debates, II, 113 28
Elliot, IV, 171, 147, 154 28
Federalist (No. 83) 27
Frankfurter and Corcoran, Petty Federal Offenses, 39 Harv. L. Rev. 925 14
1 Greenl. Laws N. Y. 422; 2 R. L. of 1813, p. 504, 507 33
House Journal, 1st Cong. 64, 79, 85, 89, 106, 115, 116, 121 29
Jenks, Short History of English Law, Eng. ed. 153, 154 14
Paley on Summary Convictions 14, 36
Parish and County 419 14
Russell on Crimes, 7th ed., I, p. 10 12
Senate Journal, 63, 64, 71, 73, 77, 83, 84, 86-88 29
Senate Report No. 568 of the 69th Congress, 1st Sess., p. 4 7
Webb, English Local Government 14

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BRIEF FOR THE DISTRICT OF COLUMBIA

Opinion Below

No opinion was rendered by the Police Court. The opinion of the Court of Appeals (R. 8, 15) is reported in 38 F. (2d) 535.

Jurisdiction

The judgment of the Court of Appeals was entered on February 4, 1930, (R. 15). The petition for certiorari was filed April 24, 1930, and was granted May 26, 1930. Jurisdiction to issue the writ is conferred by Section 240 (a) cf the Judicial Code as amended by the Act of February 13, 1925.

Question Presented

The question at issue is whether in the District of Columbia a defendant who is accused of reckless driving, which may be punished by imprisonment for thirty days, may be tried by the police judge without a jury in spite of the defendant's demand for a jury.

Provision of Constitution and of Statutes

Article III, section 2, clause 3, of the Constitution provides:

> The trial of all crimes, except in cases of impeachment, shall be by jury * * * .

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed * * * .

Paragraph 1, of Section 44 of the Code of the District of Columbia, provides as follows:

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The District of Columbia Traffic Act, 1925 (Act of March 3, 1925, c. 443, 43 Stat. 1119) provides:

> Sec. 4. The second paragraph of section 44 of the District of Columbia Code hereby is amended to read as follows: "In all cases where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury, unless in such of said last-named cases wherein the fine or penalty may be more than $300, or imprisonment as punishment for the offense may be more than ninety days, the accused shall demand a trial by jury, in which case the trial shall be by jury. In all cases where the said court shall impose a fine it may, in default of the payment of the fine imposed, commit the defendant for such a term as the court thinks right and proper, not to exceed one year."
>
> Sec. 6 (e). (Added by the Act of July 3, 1926, c. 739, Sec. 4, 44 Stat. 812, 814). All prosecutions for violations of provisions of this Act, excepting section 11 only thereof, and all amendments to the said Act or regulations authorized and promulgated under the authority of said Act and amendments thereto, shall be in the police court of the District of Columbia by information filed by the corporation counsel of the District of Columbia or any of his assistants: Provided, That nothing herein contained shall deprive any person of the right of trial by jury.
>
> Sec. 9. (Reenacted and, as to paragraphs not here quoted, amended by the Act of July 3, 1926, c. 739, Sec. 5, 44 Stat. 812, 814).

(b) No individual shall operate a motor vehicle over any public highway in the District (1) recklessly; or (2) at a rate of speed greater than is reasonable and proper, having regard to the width of the public highway, the use thereof, and the traffic thereon; or (3) so as to endanger any property or individual; or (4) so as unnecessarily or unreasonably to damage the public highway.

(c) Any individual violating any provision of this section where the offense constitutes reckless driving, shall upon conviction for the first offense, be fined not less than $25 nor more than $100 or imprisoned not less than 10 days nor more than 30 days * * * .

Statement of Facts

An information in the Police Court of the District of Columbia charged the respondent with reckless driving. (R. 2, 3). He requested a trial by jury, which was denied. A trial before the court resulted in his conviction and sentence to thirty days imprisonment. There was sufficient proof to sustain the charge alleged in the information (R. 3-5). No evidence was offered on behalf of the respondent. (R. 5). This judgment was reversed in the Court of Appeals of the District of Columbia upon the ground that the respondent was guaranteed a jury trial by the Constitution. The court conceded that persons accused of merely petty offenses may be denied jury trial without violating the Constitution, but it took the position that reckless driving was an offense at common law and for that reason it was to be classed as a crime in the constitutional sense and therefore one who was accused of reckless driving was entitled to trial by jury.

On May 26, 1930, this Court granted a writ of certiorari.

Specification of Errors to be Urged

The Court of Appeals of the District of Columbia erred:

1. In reversing the judgment of the Police Court of the District of Columbia.

2. In holding that one charged with the offense of "reckless driving" in the District of Columbia is entitled to a trial by jury, under the Constitution of the United States.

3. In holding that the offense of "reckless driving" is a "crime" within the meaning of the Constitution of the United States.

4. In holding that the offense of "reckless driving" is not a "petty offense" as that term has been used by this Court.

Summary of Argument

The respondent had no right to trial by jury in this case unless the Constitution gave him that right.

This Court has declared that Congress may require the trial of petty offenses without a jury, but it has not shown the scope of the term "petty offenses."

Before the Constitution was adopted there were many offenses, both in England and in America, in the trial of which no jury was allowed. These included not only offenses which might be punished by fines but many others in which corporal punishment or imprisonment might be imposed.

The Constitution establishes the right to trial by jury in criminal cases, but there is nothing in the terms

used or in the circumstances attending the adoption of those provisions which shows a requirement of trial by jury more comprehensive than was observed throughout the States when the provisions were adopted.

Decisions of many State Courts support the position that an offense such as is here involved, for which the maximum punishment is a fine of $100 or imprisonment of thirty days, may be tried by summary procedure.

The offense of reckless driving in the District of Columbia, as defined in the Traffic Act, is a municipal offense notwithstanding the fact that the law was enacted by the Congress of the United States. Congress has properly treated reckless driving as a petty offense.

ARGUMENT

I.

The respondent had no right to trial by jury in this case unless the Constitution gave him that right.

This Court has conceded, in cases which will be discussed later in this brief, that Congress may provide for the trial of petty offenses without a jury. It so said before the enactment of the District of Columbia Code. (Act of March 3, 1901, c. 854, 31 Stat. 1189). Section 44 of that Code as amended in 1925 (see p. 3, *supra*) provided that trials in the police court should be without a jury where the Constitution did not give the accused the right to one, unless the fine might be more than three hundred dollars or the imprisonment as punishment might be more than ninety days. Congress thus took the position that the Constitution might

not give the right to trial by jury even to the extent named in the Code. The maximum penalty which the District of Columbia Traffic Act (Sec. 9, p. 3, *supra*) authorized for the offense with which the respondent was charged was a fine of one hundred dollars or imprisonment as punishment for thirty days, a punishment well within the limits fixed by Congress as the points at which it gave the right to a jury whether or not the Constitution gave the right to a trial in that manner. Congress clearly intended that up to those limits any right of the defendant to a jury trial must depend upon the Constitution and not upon act of Congress.

There is nothing in section 6 (e) of the Traffic Act which gave to the respondent any right to trial by jury. That paragraph, which was added by the Act of July 3, 1926, c. 739, Sec. 4, 44 Stat. 812, 814, provides:

> All prosecutions for violations of provisions of this Act, excepting section 11 only thereof, and all amendments to the said Act or regulations authorized and promulgated under the authority of said Act and amendments thereto, shall be in the police court of the District of Columbia by information filed by the corporation counsel of the District of Columbia or any of his assistants: *Provided*, That nothing herein contained shall deprive any person of the right of trial by jury.

The portion of the paragraph down to the proviso was proposed by the Senate Committee on the District of Columbia as an amendment to the bill, which had originated in the House of Representatives. The amendment is explained in Senate Report No. 568 of the 69th Congress, 1st Sess., p. 4, which says:

> Under present procedure in the traffic court, first and second offenses for speeding, first offense for reckless driving, and violations of all regulations, are presented to the court by information filed by the corporation counsel or his assistants, while cases which might involve jury trials, such as third offense speeding, second offense reckless driving, first offense driving without a permit, and first offense leaving after colliding, have been presented by information filed by the United States district attorney. This practice leads to much duplication of work and considerable confusion, owing to the fact that an individual may be brought in for offenses which must be presented to the court by both the United States attorney and the corporation counsel. There seems to be no good reason why all these cases, except for use of a smoke screen (a felony) should not be presented by an assistant to the corporation counsel. As it is at present, there are two sets of attorneys handling almost identical classes of cases. They are all municipal cases and ought to be presented to the courts by the same set of attorneys, under the supervision of the District Commissioners.

The Senate agreed to the amendment (67th Cong. Rec., pt. 9, p. 10184) and conferees representing the two Houses agreed to it. (67th Cong. Rec., pt. 11, p. 11799). Subsequently there was read in the Senate a letter from the Director of Traffic concerning the revocation of permits without jury trial. (pt. 11, p. 12315). Thereupon Senators Blease of South Carolina, and Reed of Missouri, who apparently thought that the proposition then before the Senate involved more than the revocation of permits, urged trial by jury in all cases. (pp. 12315-12317). As a result of this discussion, the Senator in charge of the bill moved that the

Senate disagree with the conference report and request further conference with the representatives of the House of Representatives. (p. 124733). The conferees added to the amendment to section 6 the provision that "nothing herein contained shall deprive any person of the right to trial by jury." (p. 12765). Both Houses agreed to the bill as amended. (pp. 12765, 12895). The managers on behalf of the House of Representatives said (p. 12765) that the provision preserved the constitutional rights of citizens. They might have gone further and said that the proviso made it clear that the change in the manner of presenting cases in the police court, by which the corporation counsel would thereafter present some classes of cases which had theretofore been in charge of the district attorney, would not affect the rights of the defendants to trial by jury. The rights, both constitutional and legislative, to trial by jury which defendants had possessed theretofore were not to be affected by section 6 (e) of the act. But there is nothing to show that those rights were in any way extended by the proviso at the end of the added paragraph.

Under the Traffic Act as amended the respondent had no right to trial by jury on the charge of first offense of reckless driving unless the Constitution gave him a right to such a trial, and the trial court and the Court of Appeals properly so construed the act.

II.

This Court has declared that Congress may require the trial of petty offenses without a jury, but it has not shown the scope of the term "petty offenses."

The necessity of trial by jury was considered in *Callan* v. *Wilson* (1888) 127 U. S. 540, a case which

arose in the District of Columbia. The defendant, who was charged with conspiracy, was tried and convicted in a police court without the participation of a jury, although he had demanded jury trial. This Court said (pp. 549, 555, 557):

> In our opinion the provision [of the Third Article for the trial of "crimes" by jury] is to be interpreted in the light of the principles which, at common law, determined whether the accused, in a given class of cases, was entitled to be tried by a jury. It is not to be construed as relating only to felonies, or offenses punishable by confinement in the penitentiary. It embraces as well some classes of misdemeanors, the punishment of which involves or may involve the deprivation of the liberty of the citizen. It would be a narrow construction of the Constitution to hold that no prosecution for a misdemeanor is a prosecution for a "crime" within the meaning of the third article, or a "criminal prosecution" within the meaning of the Sixth Amentment * * *.
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> Conceding that there is a class of petty or minor offenses, not usually embraced in public criminal statutes, and not of the class or grade triable at common law by a jury, and which, if committed within the District, may, under the authority of Congress, be tried by the court and without a jury, we are of opinion that the offense with which the appellant is charged does not belong to that class * * *.
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> Except in that class or grade of offenses called petty offenses, which, according to the common law, may be proceeded against summarily in any tribunal legally constituted for that purpose, the guarantee of an impartial jury to the accused in a criminal prosecution, conducted either in the name, or by or under the authority

> of, the United States, secures to him the right to enjoy that mode of trial from the first moment, and in whatever court, he is put on trial for the offense charged.

And in *Schick* v. *United States* (1904) 195 U. S. 65, where the defendant waived trial by jury and agreed to submit the issues to the court, this Court sustained trial by the court. The statute provided a fine of fifty dollars for the offense of knowingly purchasing or receiving for sale any oleomargarine which had not been branded or stamped according to law. The court said (p. 68):

> The truth is, the nature of the offense and the amount of punishment prescribed rather than its place in the statutes determine whether it is to be classed among serious or petty offenses, whether among crimes or misdemeanors. Clearly both indicate that this particular violation of the statute is only a petty offense.
>
> In such a case there is no constitutional requirement of a jury.

The Court then interpreted the word "crimes" in Article III in the light of the common law as set forth by Blackstone and said that

> it is obvious that the intent was to exclude from the constitutional requirement of a jury the trial of petty criminal offenses.

These two cases require a somewhat careful examination.

In *Callan* v. *Wilson* the defendant was sentenced to pay a fine of twenty-five dollars or undergo imprisonment for thirty days; but that was not the maximum

punishment which might have been imposed. "It is what sentence can be imposed under the law, not what was imposed, that is the material consideration." (*United States* v. *Moreland*, 258 U. S. 433, 441). While no statute dealt with conspiracy directly, Rev. Stat. Dist. Col., Sec. 92, provided that laws which were in force in Maryland on February 27, 1801, should continue in force within the District of Columbia, and conspiracy was a common-law misdemeanor in Maryland (*State* v. *Buchanan* (Md., 1821) 5 Harris & Johnson, 317, 360; and see Bishop on Criminal Law, 9th ed., I, 452; Russell on Crimes, 7th ed., I, p. 10) and, therefore, in the District of Columbia. One who was convicted of that offense could not have been sentenced to the penitentiary (Rev. Stat. Dist. Col., Sec. 1144) but he could have been sentenced to jail (Rev. Stat. Dist. Col., Secs. 1049, 1054); and imprisonment for a common-law misdemeanor was at the discretion of the court and was not limited to one year. (See *United States* v. *Marshall* (1887) 17 D. C. 34; *Palmer* v. *Lenovitz*, 35 App. D. C. 303, 305). The offense was being punished as a common-law offense, for which very serious punishment might have been imposed. The case was, therefore, unlike the one which is now before the Court, for here the offense, which was forbidden by statute, cannot be punished by a larger fine than one hundred dollars or by a longer imprisonment than thirty days. The essential point of similarity, as found by the court below, is simply the fact that reckless driving was also an offense at common law.

It is true that in *Callan* v. *Wilson* the Court referred to the common law as determining whether an offense was of the class or grade which was triable by a jury at common law. It substantially said that the clauses

of the Constitution which provide for trial by jury are to be read in the light of the rule of the common law which requires trial by jury in criminal cases but exempts petty offenses from this requirement. But the Court did not take the position that all offenses must remain for all time as they were at common law. It did not deny that Congress may provide serious punishment for acts which were regarded as innocent a hundred and forty years ago and punish lightly, or not at all, acts which were regarded as serious crimes by our ancestors. Certainly if offenses which were once petty are to be punished severely, a trial by jury must be allowed; and it must be equally true that if Congress decides that an offense shall be given a petty punishment persons who are accused of such acts may be tried as for petty offenses. As the court said in *People* v. *Craig*, 195 N. Y. 190, 197, "It is not the mere name of a crime but the punishment therefor that characterizes it." The decision in *Callan* v. *Wilson* does not deny the power of Congress to erect its own standards as to the seriousness of offenses at the present day, to limit the punishment accordingly, and to order the trial of an offense which it treats as petty by summary procedure.

In *Schick* v. *United States, supra*, the only punishment provided for the offense was a fine of fifty dollars, and the defendant waived trial by jury. The Court decided that such waiver was valid, and said incidentally that the offense was a petty one and therefore Congress might have required trial by the judge alone. Its statements that the Constitution does not require jury trial of petty offenses and that the nature of the offense and the amount of the punishment determine whether the offense is serious or petty, mark the extent of the holding of the Court, for it cannot be sup-

posed that the Court, in the passage already quoted, intended to class all misdemeanors as petty offenses. In referring to the nature of the charge as a factor to be considered the Court may well have meant that the effect of conviction upon the reputation of the defendant may be considered as well as the amount of the fine or the imprisonment; but it did not discuss this point.

The Court has thus conceded that the Constitution does not require trial by jury in the case of petty offenses, but it has not shown just what offenses are to be classed as "petty."

III.

Before the Constitution was adopted there were many offenses, both in England and in America, in the trial for which no jury was allowed. These included not only offenses which might be punished by fines but many others in which corporal punishment or imprisonment might be imposed.

Before the adoption of the Constitution Parliament had enacted a number of statutes for the trial of criminal offenses by justices of the peace without providing for the participation of juries, not only when fines were authorized but also when conviction might be followed by whipping or imprisonment. The statutes thus granting the power of summary conviction are discussed in Blackstone, Commentaries, IV, 280; Paley, Summary Convictions, Introduction; Webb, English Local Government: Parish and County, 419; Jenks, Short History of English Law, Eng. ed., 153, 154; Frankfurter and Corcoran, Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury, 39 Harv. L. Rev. 925, 929. Under such statutes, a servant who assaulted his master or overseer (5 Eliz., c.

4, Sec. 21) or a maker of false prophesies for the purpose of disturbing the realm (5 Eliz., c. 15) might be imprisoned for one year; any one who cut growing grain or robbed orchards might be whipped (43 Eliz., c. 7); a silk-winder who embezzled goods committed to him might be whipped or set in the stocks (13 and 14 Car. II, c. 15); any one who maliciously injured trees might be put to hard labor in the house of correction for three months (1 Geo. I, Stat. 2, c. 48; 6 Geo. I, c. 16); men who lurked near the shore in order to aid smugglers might be committed to the house of correction to be whipped and kept at hard labor for not more than a month (9 Geo. II, c. 35, Sec. 18); one who removed rushes which had been planted to preserve sand hills was to be fined for the first offense, but for the second offense might be committed to the house of correction for one year, to be whipped and kept at hard labor (15 Geo. II, c. 33, Sec. 6); and vagabonds might be sentenced to imprisonment for six months, and an incorrigible rogue for two years, with whippings. (17 Geo. II, c. 5).

In the American Colonies and States there were many instances of laws for the trial of criminal offenses which did not provide for the participation of juries except, if at all, on appeal.

Thus, in New Hampshire the laws provided that many offenses were to be tried before one or two justices of the peace and said nothing whatever concerning juries in trials before those justices although the laws carefully provided for juries in trials before other tribunals. If any persons who had been convicted of adultery and sentenced to wear the capital letter A upon their outer garments were at any time found without the letter so worn, "they shall by warrant from a justice of the peace be forthwith apprehended and

ordered to be publicly whipped, not exceeding fifteen stripes." (Act of June 14, 1701, Laws of New Hampshire, compiled by A. S. Batchellor and successors, I, 676). Any Indian, negro or slave who was abroad in the night time after nine o'clock, unless upon an errand for his master, was to be sent by any justice of the peace to the house of correction, to receive the discipline of the house, and where there was no house of correction he was to be openly whipped by the constable, not exceeding ten stripes. (1714, Laws, II, 138). Justices of the peace might send vagrants to the workhouse. (1718, II, 266). Any negro, Indian or mulatto servant breaking a street lamp might be whipped ten stripes for the first offense and twenty stripes for a later offense. (1754, III, 72; see also V, 691). The disorderly celebrating of Guy Fawkes Day might be punished by imprisonment for forty-eight hours (1768, III, 514); and the disorderly celebrating of Christmas, gaming in public places or driving through the public streets of a town faster than five miles an hour, might be punished by imprisonment for forty-eight hours or setting in the stocks for two hours. (1771, III, 564). The laws authorized justices of the peace to impose fines for many offenses. In these trials without jury, if those who were fined did not pay the fine promptly the alternative punishments were often severe. For profanity one might be sentenced to ten days in jail (1747, III, 29; 1791, V, 651; for Sabbath-breaking forty days (1785, V, 75); one who killed deer out of season might be sent to the workhouse for forty days for the first offense and fifty days for every subsequent offense (1740/1, II, 585; see also 1778, IV, 183); one who broke a street lamp and did not pay his fine within six hours after sentence might be punished by imprisonment for six months (1754, III, 72); and

one who spoke against the war with Great Britain might be sentenced to six months imprisonment if he did not pay his fine. (1777, IV, 75). The constitution of 1784, in section 15 of the bill of rights, provided that no one might be deprived of his life, liberty or estate but by the judgment of his peers or the law of the land, there was no other provision for the trial of criminal offenses by jury.

In 1630 the Court of Assistants of Massachusetts Bay, which exercised legislative, executive and judicial powers, ordered that justices of the peace were "in all things to have like power that justices of the peace hath in England for reformation of abuses and punishing of offenders; and that any justice of the peace may imprison an offender, but not inflict any corporal punishment without the presence and consent of some one of the assistants." (Records of the Colony of Massachusetts Bay, Shurtleff, I, 74). The Court itself punished a colonist who had been injuring Indians by sending him to the bilbowes, confiscating his property and sending him back to England. (Same, 75); a servant was whipped for misdemeanor towards his master (p. 81); a man was whipped for shooting at fowl on the Sabbath (p. 82); a man was whipped, had his ears cut off and was fined and banished for speeches against the government and the church of Salem (1631, p. 88); a man for attempted rape, swearing and breaking into a house was sentenced to a whipping of thirty stripes, a year's imprisonment at hard labor and coarse diet, and to wear an iron collar, 1636, p. 177); and other similar punishments were imposed. (1631, pp. 90, 91, 92, 1632, pp. 99, 100, 101). During this period juries are noted only in a civil case (1631, p. 86) and in cases involving murder or manslaughter. (1630, p. 81, 1637,

pp. 202, 203). It was not until four years after the settlement that it was ordered that no trial should pass upon life or banishment but by jury or by the General Court (1634, p. 118; and see p. 312). By Province Laws 1693, c. 9, Acts and Resolves, I, 122, a justice might "punish breakers of the peace, prophaners of the Sabbath, and unlawful gamesters, drunkards, or prophane swearers of cursers, by setting in the stocks, or putting into the cage, not exceeding three hours, or imprisonment twenty-four hours, or by whipping, not exceeding ten stripes, as the case may deserve, and where the offender has not wherewithall to satisfy the law in that case provided." It seems that where the laws provided for fine or alternative corporal punishment it was not always possible for the offender to avoid corporal punishment by paying the fine. (See also, for example, Laws 1705-6, c. 5, Sec. 6, Acts and Resolves, I, 573; Laws 1711-12, c. 6, Sec. 13, I, 679, 681). A justice might try and might fine or punish those who, for example, refused to serve in public office (1720, II, 185; 1731, II, 599; see also 1761, IV, 462; Act of May 8, 1781, c. 10); sold liquor without a license (1711, I, 679, 681) or to Indians (1765, IV, 763—forty shillings or three months); or demanded money when armed or at night time when accompanied by others or built a bonfire within ten perches of any building (1756, III, 997—forty shillings or one month). Persons who led idle or disorderly lives might be committed to the house of correction, to be kept at hard labor until discharged by order of the justice of the peace or by the sessions court (1699, I, 378; 1720, II, 182; 1731, II, 579; 1770, V, 46) or might be sentenced to three hours in the stocks or to ten stripes. (1770, V, 46). The Act of March 26, 1788, c. 21, p. 680, authorized one justice

of the peace to send beggars, fortune-tellers, common drunkards and idle and disorderly persons to the house of correction, to be kept there until discharged by the overseers of the poor. For the second offense of profanity one might be placed in the stocks or whipped. (1731, II, 700). An act of 1777 (V, 626), which authorized a justice of the peace to commit a deserting soldier and notify his commanding officer but did not authorize any fine, stipulated that if the offender were unable to pay such fine the justice might sentence him to thirty-nine lashes for each offense. Two justices might try one who wilfully broke a street lamp and fine him five pounds for the first offense and ten for the second; if he did not pay the fine within six hours he might be imprisoned for six months. (1753, III, 645). Under the same law a negro, Indian or mulatto servant who broke such a lamp might be whipped ten stripes for the first offense and twenty for any later offense. (Compare 1774, V, 301, where the fine was raised to twenty pounds and the trial was transferred to the court of general sessions). By Act of March 15, 1785, c. 33, p. 263, one justice of the peace might try a person accused of larceny provided the treble value of the property stolen did not exceed forty shillings and might sentence the offender to pay a fine of forty shillings or to be imprisoned for twenty days and to make satisfaction. And by Act of Feb. 28, 1787, c. 16, pp. 579, 586, a justice might fine an innkeeper for keeping gaming implements or permitting dancing or suffering any one to drink to excess in his house, and if the fine were not paid might sentence him to a public whipping of fifteen stripes. Several of the above laws were enacted after the state constitution, adopted in 1780, had provided in the Declaration of Rights, Article 12:

> No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.
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> And the legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

In Rhode Island, Acts of September, 1790, provided for a fine of fifteen pounds to be imposed by a justice of peace upon any one who rode faster than a common traveling pace in the streets or highways within eighty rods of the State House in South Kingston.

In New York prior to 1732 there seems to have been no offense punishable by a justice which might not have been atoned by the payment of a fine except that where a servant sold a commodity during the time of his service, two justices might impose either fine or corporal punishment (1665, Colonial Laws of New York, I, 47) and that if a mayor or two justices of the peace decided that a person was a vagrant they might order his or her transportation to place of birth or out of the province, and in case of a return order retransportation from constable to constable, with lashings on the bare back by each constable. (1721, Same, II, 56). In 1732 there was enacted further legislation (II, 745) which was broadened in 1744 into the provisions that when any person who was charged with any offense under the degree of grand larceny was unable to give bail to appear at the next general sessions, he might be tried and sentenced to corporal punishment, the trial being by three magistrates of the class named

if within the city of New York and by three justices of the peace if elsewhere in the colony. (1744, III, 377, 379). The constitution of 1777 (Art. XLI) provided that "trial by jury, in all cases in which it hath heretofore been used in the colony of New York, shall be established and remain inviolate forever." Nevertheless an act of 1785 (c. 40) authorized the mayor, recorder and aldermen of New York City to commit to the house of correction for not more than six months any one whom they might theretofore have sentenced to corporal punishment, and to commit any vagrant or prostitute to the house of correction for a similar term; an act of 1787 (c. 15, Sec. 21) authorized a majority of inspectors at any election to jail for thirty days any person who was guilty of disorderly conduct at any election or used corrupt means to influence any elector; and in 1788 (c. 31) the legislature authorized any justice to commit any disorderly person to the house of correction, at hard labor, for two months or hold him for the next general sessions, which might commit him to the house of correction for six months, with whippings. Such statutes did not deny trial by jury in cases in which it had been used at the time of the adoption of the constitution. A statute similar to that of 1744—by which three justices tried without a jury a man who was accused of petty larceny and was unable to give bail—was sustained in *Murphy* v. *People* (1824) 2 Cow. 815; see also *Duffy* v. *People* (1843) 6 Hill, 75, 78. And in *People ex rel. Murray* v. *Justices* (1878) 74 N. Y. 406, the Court of Appeals sustained a statute under which a defendant charged with assault and battery elected to be tried by such a court, without a jury, was convicted and was sentenced to imprisonment for four months. The statutes, however,

did not give the court jurisdiction to try for an offense where a sentence to imprisonment for more than one year might be imposed. *People ex rel. Cosgriff* v. *Craig* (1909) 195 N. Y. 190.

In Pennsylvania the Body of Laws (1682, Pennsylvania Charters and Laws, 107 et seq.) provided for trial by jury "in criminal matters of life" (p. 117), but it also provided that any servant assaulting or menacing his master or mistress should be punished at the discretion of two justices of the peace, "so it be suitable to the nature of the offense" (p. 113); that for clamorous scolding a justice of the peace should commit the offender to the house of correction for three days (p. 115; see also p. 198) and that profanity and drunkenness should be punished, apparently after hearings before a justice of the peace (see 1683, p. 133), by fines ranging up to ten shillings or, at the discretion of the justice (p. 121), by imprisonment in the house of correction at hard labor ranging up to ten days. (pp. 108, 109, 110). Similar punishments for profanity might be assessed by one justice of the peace under an act of 1702 (Stat. at L. of Pa., II, c. 44). An act of 1767 (VII, c. 552) authorized any justice of the peace of the city of Philadelphia or named adjoining townships, upon due examination and proof, to sentence any disorderly persons or vagabonds without visible means of subsistence to the house of employment to be kept at hard labor for not more than one month. Another act passed on the same day (VII, c. 555) authorized any justice of the peace outside of Philadelphia and of the townships named to impose a similar punishment upon disorderly persons but allowed an appeal to the court of general quarter sessions in such cases. The state constitution of 1776 provided (Declaration

of Rights, Sec. 9) "That in all prosecutions for criminal offenses, a man hath a right to * * * a speedy public trial, by an impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty;" and (Frame of Government, Sec. 25) "Trial shall be by jury as heretofore." By acts of 1777 (IX, cc. 737, 739) all laws which were in force on May 14, 1776, were continued in force, and justices of the peace were given the same powers and jurisdiction as they had theretofore possessed.

In Maryland an act of 1638/9 (Maryland Archives, I, 53) authorized the Lieutenant General or any one of the council having commission for the peace to hear and determine as any justice of the peace in England might do the following cases in addition to those in which fines were authorized: drunkenness, punishable by whipping or other corporal punishment; fornication and adultery, public whipping or fine; refusal of servant to perform lawful command, whipping or other correcting at the discretion of the justices. The colony naturally punished the misconduct of slaves by inflicting physical pain rather than by fines. The justices were authorized to try and order whippings for any slave who carried a gun off the lands of his master without license from his master (1704, 26 Archives, 261), who stole or committed any other crime or misdemeanor (1717, 33 Archives, 112), or who harbored other slaves (1748, Maryland Session Laws, 21); while a negro who struck a white man might have one of his ears cropped. (1723, 34 Archives, 732). Any constable might whip, not over thirty-nine lashes, any slave whom he found attending an unlawful meeting, and might do this without proceedings in any court. (1723, 34 Archives, 731). Any person, free or slave,

who navigated a sloop unlawfully carrying tobacco might be given thirty-nine lashes. (1747, Maryland Session Laws, 9; 1753, Session Laws, 2). The Maryland Constitution of 1776 provided in its Declaration of Rights (Sec. 3) "That the inhabitants of Maryland are entitled to the common law of England and the trial by jury according to the course of that law;" (Sec. 19). "That, in all criminal prosecutions, every man hath a right * * * to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty;" and (Sec. 21) "That no free man ought to be * * * deprived of his life, liberty or property but by the judgment of his peers or by the law of the land." And yet the laws of 1780, June session, c. 14, Sec. 77, provided that any free man making a fire in or near a public tobacco warehouse should be fined six hundred pounds of tobacco and any servant or slave so doing should by order of any justice receive on his bare back not more than thirty-nine lashes (see also Sec. 89); by Session Laws, 1785, c. 29, Sec. 5, if any person suffered any servant or slave to kill a wild deer contrary to the act he was to be fined ten pounds, and if any servant or slave killed such wild deer without the knowledge of his master he was to receive not more than thirty-nine lashes at the discretion of the justice of the peace; and by Laws 1787, c. 11, Sec. 16, any justice of the peace of Kent County might commit any disorderly person or idle person without visible means of subsistence to the workhouse for three months. (See also Laws 1787, c. 16, Sec. 16; Laws 1788, c. 14, Secs. 15, 16, 17, c. 15, Secs. 16, 18).

In North Carolina By-Laws 1770, c. 10, Sec. 2, 23 Rec. at 802, if any one were convicted before a justice of the peace of hunting with a gun in the night time

by fire light, the justice might impose a fine and "order such offender to have and receive thirty-nine lashes, on his bare back, well laid on." By-Laws 1777, c. 21, 24 Rec. 33, if a justice found the accused guilty of night hunting he might require the convict to serve as a continental soldier for three years unless he immediately procured an able-bodied and effective substitute to serve for that term. By-Laws 1778, c. 2, 24 Rec. at 158, any one convicted before a justice of the peace of being a vagabond might be sentenced to serve in the continental army, and any one convicted before two justices of harboring a deserter might be sentenced to serve in the continental army for three years if he were able-bodied; and if he were not sufficiently able-bodied to serve as a soldier he might be fined fifty pounds and sentenced to imprisonment for three months. By-Laws 1780, c. 7, 24 Rec. at 325, if two justices of the peace found that any person supported himself for the most part by gaming, they might require security that he would not bet anything whatever for the term of twelve months. And Laws 1784, c. 34, 24 Rec. 597, punished gaming by imprisonment, involuntary servitude and, where necessary, by thirty-nine lashes on the bare back for each offense. (See also Laws 1764, c. 4, 23 Rec. 611). Several of these laws were enacted after the North Carolina Constitution of 1776 had provided in Article 9 of the Declaration of Rights.

> That no free man shall be convicted of any crime, but by the unanimous verdict of a jury of good and lawful men, in open court, as heretofore used.

Volumes 18 and 19 of the Colonial Records of Georgia contain legislation of that colony and state down

to 1800 which authorized trial for offenses without jury. (See Georgia Justice of the Peace, title "Conviction"). Such was the act of Feb. 29, 1764, 18 Rec. 588, for the punishment of vagabonds and other idle and disorderly persons—an act which authorized imprisonment up to three months or whippings up to one hundred stripes. Such was the act of Feb. 21, 1785, 19 Rec., pt. 2, at 424, under which any white person guilty of fast driving in Savannah was to be fined without trial by jury and any slave might be given thirty-nine lashes. Without jury trial fines of five pounds might be imposed on those who damage roads (March 7, 1755, 18 Rec. at 95), sold liquor to Indians without licenses (July 23, 1757, 18 Rec. at 223), built wooden chimneys (March 27, 1759, 18 Rec. 313), took any material from fortifications (April 24, 1760, 18 Rec. at 415), sold liquor to slaves without the consent of their owner (Dec. 24, 1768, 19 Rec., pt. 1, at 79), hunted deer at night by fire light (Sept. 29, 1773, 19 Rec., pt. 1, 288), or who, as church warden, failed to inspect slave owners who attended church and prosecute those who came unarmed (Feb. 27, 1770, 19 Rec., pt. 1, 137).

IV.

Article III and the Sixth Amendment established the right to trial by jury in criminal prosecutions; but there is nothing in the terms used or in the circumstances or discussions attending their adoption which shows a requirement of trial by jury more comprehensive than was observed throughout the States at the time.

The provision for trial by jury first appeared before the Federal Convention when reported by the Committee of Detail on August 6. Article IX, Sec. 4 read:

> The trial of all criminal offenses (except in cases of impeachment) shall be in the State where they shall be committed; and shall be by jury.

On August 28

> Sect. 4 was so amended nem: con: as to read "The trial of all crimes (except in cases of impeachment) shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, then the trial shall be at such place or places as the Legislature may direct." The object of this amendment was to provide for trial by jury of offenses committed out of any State.

The Committee on Style on September 12 proposed to change the number of the section, to omit the word "then" and to change "the legislature may direct" to "the Congress may by law have directed." Its changes were adopted. On September 15 a motion to secure trial by jury in all civil cases was rejected without dissent. It will be observed that in the Convention there was no discussion of the scope of the provision for trial by jury in criminal cases and that "crimes" and "criminal offenses" were treated as synonymous.

The Federalist (No. 83) discussed trial by jury in civil cases; but its only reference to criminal cases was as follows:

> The friends and adversaries of the plan of the convention if they agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them it consists in this: the former

> regard it as a valuable safeguard to liberty, the latter represent it as the very palladium of free government * * *. I must acknowledge that I cannot readily discern the inseparable connection between the existence of liberty, and the trial by jury in civil cases. Arbitrary impeachments, arbitrary methods of prosecuting pretended offenses, arbitrary punishments upon arbitrary convictions, have ever appeared to me the great engines of judicial despotism; and all these have relation to criminal proceedings. The trial by jury in criminal cases, aided by the habeas corpus act, seems therefore to be alone concerned in the question. And both of these are provided for, in the most ample manner, in the plan of the convention.

Somewhat similar language was used by Dawes in the Massachusetts convention (Elliot's Debates, II, 113) and by Iredell in the North Carolina convention (Elliot, IV, 171; see also 147, 154); but the chief interest of those who considered trial by jury was in securing a jury of the vicinage and in securing jury trial in civil as well as in criminal cases. The scope of the provision for trial by jury in criminal cases was not discussed.

The Sixth Amendment to the Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law * * *.

It does not appear that in any of the discussions in Congress which preceded its submission to the States

for ratification (see Annals of Congress, I, 435, 450, 464, 703, 707, 756, 759, 760, 778; House Journal, 1st Cong., 64, 79, 85, 89, 106, 115, 116, 121; Senate Journal, 63, 64, 71, 73, 77, 83, 84, 86-88) the term "criminal prosecutions" received any definition.

Both the Third Article of the Constitution and the Sixth Amendment secure the right to a jury in the trial of a criminal case. But there is nothing in the proceedings before the Federal Convention, the state conventions or the First Congress which suggests that the requirement of trial by jury was any more comprehensive than the practice observed throughout the States in 1787, 1788 and 1789.

V.

Decisions of many State courts support the position that an offense such as is here involved, for which the maximum punishment is a fine of one hundred dollars or imprisonment of thirty days, may be tried by summary procedure.

In *State* v. *Parker* (1924) 87 Fla. 181, the defendant was charged, tried, convicted and sentenced to 30 days imprisonment for the violation of an ordinance which provided:

> It shall be unlawful for any person or persons, while under the influence of intoxicating liquor, or while in an intoxicated condition, to drive or operate any automobile or motor vehicle, over and upon the streets of the city of Jacksonville.

Punishment for the first offense was imprisonment of not less than 30 days nor more than 60 days, with increased confinement for the second and third offense.

The provisions of the Florida Constitution pertaining to trial by jury are substantially similar to those in the Federal Constitution. Parker demanded a trial by jury, which was refused, and upon commencing his sentence a petition for habeas corpus was filed. The Supreme Court of the state of Florida in sustaining a judgment of conviction said:

> Sec. 3 of the Declaration of Rights in our Constitution, providing that "The right of trial by jury shall be secure to all, and remain inviolate forever," was never intended to *extend* the right of jury trial, but merely secures it in the cases *in which it was matter of right before the adoption of the Constitution.* Trials in Municipal Courts for infractions of municipal ordinances were conducted generally without juries prior to the adoption of our Constitution, and, therefore, do not fall within the constitutional guarantee; and offenders against such ordinances are not entitled to a jury trial in such courts. (Citing cases.)

The common law may be changed by statute when not forbidden by organic law (*Ruff* v. *Georgia*, S. & F. R. Co., 67 Fla. 224, 64 South. Rep. 782); and when the common law is changed by statute, the subsequent adoption of organic law has relation to existing statutes that change the common law. See *Camp. Phosphate Co.* v. *Anderson*, 48 Fla. 226, 37 South. Rep. 722.

In *Bray* v. *State* (1903) 140 Ala. 172, a defendant was denied a jury in a prosecution for violation of an ordinance which punished failure to pay hack fare. He was convicted and sentenced to six months at hard labor. Trial without jury was sustained.

In *State* v. *Broms* (1918) 139 Minn. 402, the defendant was prosecuted under an ordinance for disorderly

conduct, was convicted and sentenced to hard labor for ninety days. The court held that he was not entitled to a jury trial. In *State* v. *Anderson* (1925) 165 Minn. 150, the court decided that one who was accused of selling intoxicating liquor unlawfully in violation of an ordinance was not entitled to trial by jury. In that case the defendant was sentenced to imprisonment for ninety days.

In *Byers and Davis* v. *Commonwealth* (1862) 42 Pa. St. 89, an act authorized the mayor or police magistrate to try a professional thief or pickpocket who frequented designated places for an unlawful purpose and if he were found guilty to commit him to hard labor in the county jail for not more than ninety days. The defendants were tried without a jury, were convicted, and were sentenced to hard labor in jail for ninety days. The act was sustained.

In *People* v. *Harding* (1921) 189 N. Y. Supp. 657, defendant was tried and convicted in the city court of Buffalo for violation of Section 887, sub-division 4 (e) (vagrancy) of Criminal Procedure. She demanded a trial by jury which was denied. The court in its opinion said:

> As the evidence offered leaves no doubt as to her guilt, the only question left for consideration is whether or not the demand for a trial by jury was properly denied. As the power to punish vagrants under the Code of Criminal Procedure was greatly enlarged by Chapter 502 of the Laws of 1919, and as it is now possible under Section 891a to impose a sentence, not exceeding three years, to a correctional institution, or to a jail, penitentiary, or other penal institution for a period not to exceed one year, it is urged that, as the punishment now

provided is so much more severe than under the old provisions, the former decisions construing this law are no longer applicable, and that the defendant should now be entitled to a jury trial as a matter of right.

The constitutional provision for a jury trial (Article I, Paragraph 2) is: "The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever * * * ".

This section has reference to a trial by a common-law jury of twelve men (*People* v. *Cosmo*, 205 N. Y. 91, 98 N. E. 408, 39 L. R. A. (N. S.) 967; *People* v. *Justices of Court of Special Sessions*, 74 N. Y. 406) and has been in force since 1777. Courts of Special Sessions have existed since 1744 to the present time, but no jury was permitted in these courts until 1824, when the *Legislature* provided for a jury of *six* (*People* v. *Justices of Court of Special Sessions*, 74 N. Y. 406), so that any right that a defendant may have to a jury trial in a court of Special Sessions is statutory, and not constitutional, and hence, in the absence of statutory provisions therefor, the defendant is not entitled to a jury trial as a matter of right.

In the case of *Duffy* v. *The People*, 6 Hill's Rep. 75, the Court of Errors of the State of New York passed upon the constitutionality of an Act passed in 1833 punishing a husband or parent who abandoned his wife or children in the State of New York without adequate support. Duffy was convicted by the court without a trial by jury. The court in sustaining the conviction said (p. 78):

The Constitution does not require an indictment in all criminal cases; or even for all crimes which are infamous in their character. For the

> crime of petit larceny, which was always considered as infamous, is expressly excepted from the section of the 7th Article of the Constitution, which requires an indictment for capital offences, and all infamous crimes. Nor does the Constitution require a trial by jury in every case of a criminal nature. The provision of the Constitution on that subject is, that the trial by jury in all cases in which it had been used at the time of the adoption of the new Constitution, should remain inviolate forever. (Const. Art. 7). A provision substantially in the same form was contained in the former Constitution of this state but the statutes of the colony, previous to the adoption of the old Constitution, and the statutes subsequently thereto, expressly authorized the trial of petit larceny, and offences not infamous in their character, under the degree of grand larceny, without indictment, and without a jury, where the accused neglected to give security to appear at the next Court of General Sessions. (See Colonial Act of 1st Sept. 1744, and 1 Greenl. Laws N. Y. 422; 2 R. L. of 1813, p. 504, 507.) And the first law authorizing a trial by jury in any case, in a Court of Special Sessions, for such offences, was passed subsequent to the adoption of the present Constitution.

In *Bell* v. *State of Nebraska* (1920) 104 Neb. 203, the defendant was charged by an information with the offenses of having in his possession, and of transporting, intoxicating liquor. Nebraska Laws of 1917, Chapter 187, Section 55, provides that magistrates and police courts are vested with jurisdiction to try without a jury violators of this act and all ordinances wherein the penalty does not exceed a fine of $100 or imprisonment for a period of three months. Plaintiff

claimed his right under the Constitution of the State (Article 1, Section 6) which provides that "The right of trial by jury shall remain inviolate" was disregarded. The court said (page 205):

> At that time the misdemeanors now under consideration were not recognized by the common law or by any statute then in existence. New misdemeanors and modes of trial therefor are proper subjects of legislation. The better view seems to be that the legislature acted within its powers in declaring possession and transportation of intoxicating liquors to be misdemeanors, and in providing for the trial of violators of the law before magistrates and police courts without a jury where the penalty does not exceed a fine of $100 or imprisonment for three months. While the decisions of the courts are not in harmony on this question, the conclusion reached is supported by the soundest reason. *Inwood* v. *State*, 42 Ohio St. 186; *Kirkland* v. *State*, 72 Ark. 171; *Van Swartow* v. *Commonwealth*, 24 Penna. Stat. 131; *Tims* v. *State*, 26 Ala. 165; *Commonwealth* v. *Andrews*, 211 Penna. St. 110; *Goddard* v. *State*, 12 Conn. 448; *State* v. *Kennan*, 25 Wash. 621.

In this view of the law the sentence of the Justice of the Peace was properly affirmed by the District Court.

Latimer v. *Wilson* (1926) 103 N. J. L. 159. Latimer was convicted on a charge of operating a motor vehicle while under the influence of intoxicating liquor and sentenced to 30 days in jail. The case was appealed on the constitutional ground that the defendant was denied the right of a trial by jury. The maximum punishment that might have been imposed for

violation of the law was 6 months in the county jail.

The Court sustained the penalty of the Act and held that the defendant was not entitled to a trial by jury.

In *McGear* v. *Woodruff*, 22 N. J. Law 213, the court sustained the constitutionality of an ordinance punishing persons obstructing the highway by imprisonment not exceeding seven days.

In *State* v. *Glenn*, (1880), 54 Md. 572, the facts were that Margaret Glenn was tried before a justice of the peace acting as a police justice in the city of Baltimore, charged with being a habitually disorderly person and leading a dissolute and disorderly course of life. Upon trial she was convicted and sentenced to the Maryland House of Correction for a period of six months.

Petition for habeas corpus was filed upon the defendant commencing her term of imprisonment, which was granted by the lower court. The Court of Appeals of the State of Maryland reversed the decision of the lower court.

The opinion of the court (pp. 599, to 606, inc.) reviews the history of trial by summary procedure both in this country and in England. The provision of the State Constitution provided that in all criminal prosecutions one was entitled to a trial by an impartial jury. The opinion of the court states: (p. 600)

> In England, notwithstanding the provision in the Magna Charta of King John, Article 46, and in that of 9 Hen. 3, Ch. 29, which declares that no freeman shall be taken, imprisoned or condemned, 'but by lawful judgment of his peers, or by the law of the land', it has been the constant course of legislation in that kingdom, for centuries past, to confer summary juris-

> diction upon justices of the peace for the trial and conviction of parties for minor and statutory police offenses; and this jurisdiction has been largely increased and extended in modern times, as will be seen by reference to Burn's Justice, Tit. Conviction; Bacon's Justice Abr., Tit. of the Peace and Paley on Summary Convictions.

The court (p. 601) quotes with approval from 4 Blackistone Com. 280, as follows:

> Another branch of summary proceedings is that before justices of the peace, in order to inflict divers petty pecuniary mulcts, and *corporal* penalties denounced by Acts of Parliament for many disorderly offenses; such as common swearing, drunkenness, vagrancy, idleness, and a vast variety of others * * *.

In referring to the approved practice of summary jurisdiction in England the court said: (p. 602)

> At present, in England, the various offenses falling under the heads of idle, vagrant, and disorderly persons, and made subject to the summary jurisdiction, are defined and classified, and the punishments prescribed by statute, 5, Geo. 4, Ch. 83, as amended by statutes 1 and 2 Vict. Ch. 38; 31 and 32 Vict. Ch. 52, and 32 and 33 Vict. Ch. 99; an analysis of which is given in 2 Broom and Had. Com. 476. The punishment prescribed in those Acts is imprisonment at hard labor. The exercise of summary jurisdiction, therefore, is not, in England at least, regarded as being in violation of the fundamental guarantees of the rights and liberties of the people; and the personal liberty of the subject at this day is as well and jealously

protected in England as in any other country, where the principles of Magna Charta and of the common law are enforced.

VI.

The offense of reckless driving in the District of Columbia, as defined in the Traffic Act, is a municipal offense notwithstanding the fact that the law was enacted by the Congress of the United States. Congress has properly treated reckless driving as a petty offense.

The offense of reckless driving was not created in a criminal statute but by the Traffic Act of 1925, which deals simply with local traffic conditions. The offense is a common one. In a city of scarcely more than five hundred thousand inhabitants there are almost seventeen hundred charges of reckless driving tried before this one court in a single year. (Report of the Commissioners of the District of Columbia, for year ended June 30, 1929, page 14.) And, as shown by the State cases herein cited, the maximum punishment for a violation of this portion of the act is relatively light. In view of these circumstances a charge of reckless driving may properly be tried without a jury.

Congress has exclusive jurisdiction over the District of Columbia. It may authorize the Commissioners of the District of Columbia to promulgate ordinances or it may enact by statute a regulation which is in the nature of a municipal ordinance as distinguished from an Act which makes the doing of a certain thing a serious offense. Section 932 of the Code of the District of Columbia provides:

> Conduct of Prosecutions, and so forth.—The attorney for the District of Columbia shall hereafter be known as the corporation counsel.

> Prosecutions for violations of all police or municipal ordinances or regulations *and for violations of all penal statutes in the nature of police or municipal regulations*, where the maximum punishment is a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia and by the city solicitor (sic) or his assistants. All other criminal prosecutions shall be conducted in the name of the United States and by the attorney of the United States for the District of Columbia.

The Court of Appeals of the District of Columbia in the case of *United States* v. *Cella*, 37 App. D..C. 433, reversed the judgment of the Supreme Court of the District of Columbia which sustained a demurrer to an indictment charging the offense of operating and owning a bucket shop in the District of Columbia (Section 869b of the Code of the District of Columbia). Defendants contended the prosecution should be in the name of the District of Columbia. The Court speaking through the same justice that rendered the opinion in the case at bar said:

> We have said in the prior case that there can be no crimes against the District of Columbia, the District not being a sovereignty; that crimes committed here are crimes against the United States. *Metropolitan R. Co.* v. *District of Columbia*, 132 U. S. 1, 33 L. ed. 231, 10 Sup. Ct. Rep. 9. Congress, in the exercise of its plenary power, has prescribed the procedure to be followed in the prosecution of offenses in the District. It has ordained that prosecutions for violations of all police or municipal ordinances or regulations, and penal statutes "in the nature of police or municipal regulations," shall be in

the name of the District. It is at once apparent, therefore, that the point raised by appellees is purely technical in character, as no substantial right is involved.

Looking to the context, and having in mind the probable intent of Congress, what is the scope of the words "penal statutes in the nature of police or municipal regulations," as used in the statute under consideration? A municipal ordinance or police regulation is peculiarly applicable to the inhabitants of a particular place; in other words, it is local in character. While municipal ordinances or police regulations are binding upon the community affected by them, they do not emanate from the supreme power of the state, which is the exclusive source of all general legislation. *Baldwin* v. *Philadelphia*, 99 Pa. 170; *Rutherford* v. *Swink*, 96 Tenn. 564, 35 S. W. 554. When, therefore, Congress required prosecutions for violations of statutes in the nature of police or municipal regulations to be in the name of the District of Columbia, it undoubtedly had in mind such local regulations as were peculiarly applicable to conditions here existing. It did not, we think, intend to require or permit prosecutions under general penal statutes to be in the name of the District of Columbia, even though the territorial scope of such statutes was restricted to the District. A statute making it an offense for a motor vehicle to exceed a certain limit of speed within the city limits would clearly be a penal statute in the nature of a police regulation. Such a statute would be designed to regulate the speed of motor vehicles in accordance with the requirements of local conditions. The bucket shop statute under consideration, however, is of a different character.

The Traffic Act deals exclusively with the District of Columbia and is a statute in the nature of a munici-

pal regulation. Congress was dealing solely with local conditions. It said that the operation of an automobile in a certain manner constituted reckless driving. There is nothing in the reports or debates prior to the enactment of the statute to indicate that Congress was attempting to revamp the common law offense of "fast" driving in a "crowded or populous" street. Because the offense of reckless driving today may have one or even more elements similar to a common law offense that fact does not thereby make it a common law offense.

Assuming, without conceding, that at the time of the adoption of the Constitution the charge of reckless driving was triable only by jury, it is submitted that in recent times the offense has been merely a petty one. In *Ex parte Wilson*, 114 U. S. 417, this Court said (p. 427):

> What punishments shall be considered as infamous may be affected by the changes of public opinion from one age to another. In former times, being put in the stocks was not considered as necessarily infamous. And by the first Judiciary Act of the United States, whipping was classed with moderate fines and short terms of imprisonment in limiting the criminal jurisdiction of the District Courts to cases "where no other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is to be inflicted." Act of September 24, 1789, ch. 20, par. 9; 1 Stat. 77. But at the present day either stocks or whipping might be thought an infamous punishment.

This language was approved in *Mackin* v. *U. S.*, 117 U. S. 348.

At the present day all men and women travel much more rapidly than was possible in 1787. Doubtless there has been an accompanying change in the attitude of the public towards reckless driving and in the effect of conviction upon an offender's standing in the community. This change in public opinion may be an important consideration in determining whether the offense should now be regarded as a petty one. The fact that there are seventeen hundred arrests for reckless driving in the District of Columbia in a single year, shows not only the need for as expeditious a trial as is compatible with law and with justice, but that the offense is not being regarded as a major one at the present time.

This Court in the case of *United States* v. *Moreland*, 258 U. S. 433, considered and decided the question of what imprisonment amounts to infamous punishment. The dissenting opinion of Justice Brandeis, concurred in by Chief Justice Taft and Justice Holmes, in reviewing the history of criminal proceedings in the Colonial period, said (p. 445):

> Confinement at hard labor in a workhouse or house of correction for periods of less than a year was a punishment commonly imposed in America in the colonial period, at the time of the adoption of the Constitution and since, for offenses not deemed serious—that is, for delinquencies as distinguished from serious crimes. Thus by the Great Law of the Province of Pennsylvania of December 7, 1682, the penalty for clamorous scolding, railing or lying was three days' imprisonment in the house of correction at hard labor; for cursing, playing at cards or dice, and for the first offense of drunkenness, it was five. For stage plays, bull baiting and

> cock fighting, it was at least ten. And for dueling it was three months. The duty to establish such a house "for restraint, correction, labour and punishment" was imposed upon every county of Pennsylvania at the same time. A similar law had been enacted in Plymouth Colony in 1658; in Massachusetts Colony earlier; and like provision was made in other colonies. By the Law of New York of February 9, 1788, c. 31, confinement in the house of correction at hard labor was prescribed as the punishment for all disorderly persons. And those "who threaten to run away and leave their wives and children to the city or town" were classed as disorderly persons, with vagrants, beggars, idlers, fortune-tellers and common prostitutes. The period of imprisonment, limited ordinarily to sixty days or until the next general sessions of the peace, could be extended by the general sessions for a further period of six months. In the counties or cities in which there was no workhouse (bridewell) or house of correction, the jails were to be used and considered as such. A single institution often served as almshouse, insane asylum, workhouse, house of correction and jail. *And under all of these laws commitment to the workhouse at hard labor was made by a judge, justice of the peace, or magistrate, without presentment or indictment of a grand jury.* (Italics ours).

The Court of Appeals in its decision relied upon the case of *U. S.* v. *Hart*, 1 Pet. cc. 390. The offense charged against the defendant, who was a constable in the city of Philadelphia, was knowlingly and willfully retarding the passage of the mail. The defendant relied upon the fact that the mail coach was going at a fast rate of speed so as to endanger the lives and safety of the citizens; that it was passing very rapidly through

Market Street at the time it was stopped by the defendant. Some witnesses stated the speed to be as high as 8 or 9 miles an hour. The defendant justified his conduct upon an ordinance of the city which subjected every person to a fine who should drive at an immoderate rate of speed in the city so as to endanger the citizens thereof, or who should drive a carriage on runners without bells. It was contended by defendant's counsel that this ordinance offered complete justification to the constable; if not, that fast driving in a populous street in such a manner as to endanger the safety of the inhabitants, amounted to a breach of the peace at common law, in which case the constable is authorized without a warrant to arrest the party.

The court said:

> But, there is in truth no collision between this ordinance and the act of Congress on which this indictment is founded. If the mail carrier should violate the ordinance, the Act of Congress does not shelter him from the penalty imposed by the ordinance. But the ordinance does not authorize any officer to stop the mail, and consequently he cannot justify his having done it, under that ordinance. The defendant's counsel have then resorted to the common law, which authorizes a constable, without warrant, to prevent a breach of the peace; and it is contended, that for any person to drive through a populous city, at such a rate as to endanger the lives or the safety of the inhabitants, amounts to a breach of the peace.
>
> * * * As to the first question the Court is of opinion that driving a carriage through a crowded or populous street, at such a rate or in such a manner as to endanger the safety of the inhabitants, is an indictable offense at common

> law, and amounts to a breach of the peace. But, whether in the two cases stated in this indictment, the mail carrier so conducted himself as to come within this principle, is a question proper for the jury to decide. If they decide this fact affirmatively, then upon the principles of the common law, the constable was authorized without a warrant, to prevent the peace from being broken.
>
> (Verdict not guilty).

The court apparently misconceived the significance of the term "indictable offense." The driver of the mail coach was at most only guilty of a breach of the peace and such an offense was not, at common law or today, triable upon an indictment, but has consistently been punished summarily by a magistrate. The offense alleged to be committed by the driver of the mail coach was in the presence of the constable, the defendant Hart. He would be authorized to arrest without a warrant and the opinion states that this would be so by virtue of the authorization to prevent a breach of the peace. This Court in *Ex parte Wilson*, 114 U. S. 417, in discussing the point of the necessity of indictment for offenses stated:

> By the law of England, informations by the Attorney-General, without the intervention of a grand jury, were not allowed for capital crimes, nor for any felony, by which was understood any offence which at common law occasioned a total forfeiture of the offender's lands, or goods, or both. 4 Bl. Com. 94, 95, 310. The question whether the prosecution must be by indictment, or might be by information, thus depended upon the consequences to the convict himself. *The Fifth Amendment, declaring in what cases a grand jury should be necessary,*

> *and in effect affirming the rule of the common law upon the same subject, substituting only, for capital crimes or felonies, "a capital or otherwise infamous crime," manifestly had in view that rule of the common law, rather than the rule on the very different question of the compentency of witnesses.* (Italics ours.)

It is clear from the foregoing that the utterance of this Court as quoted above conclusively demonstrates that a breach of the peace consisting of fast driving so as to endanger the lives and safety of the citizens was not an indictable offense at common law. The Court of Appeals seized the phrase "indictable offense at common law" used in the Hart case, supra, and concluded the offense of reckless driving defined in the Traffic Act was an "indictable offense" and therefore a "crime" as that term is understood in Article 3, Section 2, Clause 3, of the United States Constitution. By such process, it is deferentially submitted, the Court thereby erred.

The offense of fast driving over a crowded and populous street at such a rate or in such manner as to endanger the safety of the inhabitants, is quite different from the offense prohibited by the Traffic Act and known as reckless driving. The first can only be committed where the carriage or vehicle attains a speed which is designated *fast* and over a *crowded* or *populous* street. The offense of reckless driving may be committed although the operator of the vehicle is not proceeding *fast* and may be committed upon a street that is not *crowded* or *populous* and irrespective of whether the operation of the vehicle amounts to a breach of the peace or not.

CONCLUSION

It is submitted that the decision of the Court of Appeals of the District of Columbia should be reversed.

Respectfully submitted:

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Corporation Counsel, D. C.

ROBERT E. LYNCH
Assistant Corporation Counsel, D. C.

ROBERT P. REEDER
of Counsel

September 1930

(8340)

FILE COPY

OCT 28

CHARLES ELMORE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 96

DISTRICT OF COLUMBIA, PETITIONER,

v.

WILLIAM H. COLTS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Leave of Court having been granted, Counsel for the District of Columbia set forth the British Statute referred to during the hearing of the case.

13 GEORGE III, CHAPTER 84
(Act of Parliament 1773)

> An Act to explain, amend and reduce into one Act of Parliament, the general laws now in being for regulating the Turnpike Roads in that part of Great Britain called England; and for other purposes.

Chapter 84 contains 86 sections, however only Section 40, set forth below, was called to the attention of the Court during the argument of the case.

"Section XL: And whereas many bad accidents happen, and great mischiefs are frequently done upon the streets and highways, being Turnpike Roads, by the negligence or wilful misbehavior of persons driving carriages thereon; be it therefore enacted, that if the driver of any cart, car, dray or wagon, shall ride upon any such carriage, in any street or highway, not having some other person on foot, or on horseback, to guide the same (such carriages as are conducted by some person holding the reins of the horse or horses drawing the same excepted); or if the driver of any carriage whatsoever, on any part of any street or highway, shall, by negligence or wilful misbehavior, cause any hurt or damage to any person or carriage passing . being upon such street or highway; or shall quit the high . and go on the other side of the hedge or fence inclosing the same; or wilfully be at such distance from su carriage, or in such a situation, while it shall be assing upon such highway, that he cannot have th irection and government of the horses or cattle drav ng the same; or shall, by negligence or wilful misbeh or, prevent, hinder or interrupt the free passage any other carriage, or of his Majesty's subjects, on said highway; or if the driver of any empty or u ded wagon, cart, or other carriage shall refuse or neg to turn aside and make way for any coach, chariot, haise, loaded wagon, cart, or other loaded carriage; or if any person shall drive, or act as the driver of any such coach, post chaise or other carriage, for hire, or wagon, wain or cart, not having the owner's name, as hereby required, painted thereon; or shall refuse to discover the true christian and surname of the owner of such respective carriage; every such driver so offending in any of the cases aforesaid, and

being convicted of any such offense, either by his own confession, the view of a justice of the peace, or by the oath of one or more credible witness or witnesses, before any justice of the peace of the limits where such offense shall be committed, shall, for every such offense, forfeit any sum not exceeding ten shillings, in case such driver shall not be the owner of such carriage; and in case the offender be the owner of such carriage, then any sum not exceeding twenty shillings; and in either of the said cases shall, in default of payment, be committed to the house of correction for any time not exceeding one month, unless such forfeiture shall be sooner paid; and every such driver offending in either of the said cases shall and may, by Authority of this Act, with or without any warrant, be apprehended by any person or persons who shall see such offense committed, and shall be immediately conveyed or delivered to a constable or other peace officer, in order to be conveyed before some justice of the peace, to be dealt with according to law; and if any such driver, in any of the cases aforesaid, shall refuse to discover his name, it shall and may be lawful for the justice of the peace before whom he shall be taken, or to whom any such complaint shall be made, to commit him to the house of correction for any time not exceeding three months, or to proceed against him for the penalty aforesaid, by a description of his person and the offense, and expressing in his proceedings, that he refused to discover his name."

Respectfully submitted,

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Assistant Corporation Counsel, D. C.

FILE COPY

OCT 14 1930
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

No. 96

DISTRICT OF COLUMBIA, PETITIONER,

v.

WILLIAM H. COLTS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT

WILLIAM B. O'CONNELL,
HARRY T. WHELAN,
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Attorneys for Respondent.

INDEX

	Page
Question to be decided.	1
Constitutional requirements for trial by jury.	3
Origin and value of trial by jury.	5
What determines when the Constitutional Guarantee attaches.	9
Has Congress the power to fix arbitrary limits of punishment as the test for determining the right of a defendant to a trial by jury in a criminal case?	12
The offense with which the defendant was charged is a crime.	18

CITATIONS

	Page
American Publishing Co. v. Fisher, 166 U. S. 466	14
Barron v. Mayor and City Council of Baltimore, 7 Peters 243	18
Blackstone's Commentaries, Book III, page 379	6
Blackstone's Commentaries, Book IV, pages 280, 281, 282	9
Blackstone's Commentaries, Book IV, page 166	11
Blackstone's Commentaries, Book IV, pages 217, 283	12
Blackstone's Commentaries, Book IV, page 5	19
Byars v. United States, 273 U. S. 28	19
Callan v. Wilson, 127 U. S. 540	5
Patton v. United States, 74 U. S. 405, L. ed	5
Schick v. U. S., 195 U. S. 65	4

UNITED STATES CONSTITUTION

Article III, Section 2, Clause 3	3
Sixth Amendment to the Constitution	3

UNITED STATES STATUTES

Act of March 3, 1925, C. 443, 43 Stat. 1119	2

IN THE

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DISTRICT OF COLUMBIA, PETITIONER,

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT

I.

Question to be Decided.

At the outset of the brief filed herein on behalf of the District of Columbia (p. 2), there is the following statement:

> "The question at issue is whether in the District of Columbia a defendant who is accused of reckless driv-

ing, which may be punished by imprisonment for thirty days, may be tried by the police judge without a jury in spite of the defendant's demand for a jury trial."

While it true that the defendant in this case was charged with the offense of reckless driving; was convicted and sentenced to thirty days in jail in spite of his demand for a jury trial, a careful analysis of the entire case discloses there is more involved here than the question as set forth by the District of Columbia in its brief. Under the provisions of the Statute, the maximum punishment for the offense of reckless driving in the District of Columbia is a fine of $100.00, or imprisonment not to exceed thirty days. There is nothing, however, in that particular Act that says the defendant is not entitled to a jury trial. The authority on which the District of Columbia relies for denying the defendant a trial by jury is the Act of Congress, known as the District of Columbia Traffic Act (Act of March 3, 1925, c. 443, 43 Stat. 1119), which provides:

"Sec. 4. The second paragraph of Section 44 of the District of Columbia Code hereby is amended to read as follows: 'In all cases where the accused *would not by force of the Constitution of the United States* be entitled to a trial by jury, the trial shall be by the court without a jury, unless in such of said last-named cases wherein the fine or penalty may be more than $300, or imprisonment as punishment for the offense may be more than ninety days, the accused shall demand a trial by jury, in which case the trial shall be by jury. In all cases where the said court shall impose a fine it may, in default of the payment of the fine imposed, commit the defendant for such a term as the court thinks right and proper, not to exceed one year.' "

It will be seen, therefore, that the test as to whether or not a defendant is to be entitled to a trial by jury is whether or not the particular offense, with which he might be charged, is punishable by a sentence, which may exceed a fine of $300, or imprisonment in excess of ninety days, unless he is entitled to a jury trial by force of the Constitution of the United States. Under this Act of Congress, if the punishment is below these limits, a defendant is not entitled to a jury trial, unless guaranteed by the Constitution. If the punishment is beyond these limits, a defendant is entitled to a trial by jury, if he so requests. Congress, in passing this statute, seems to take it for granted that there are some offenses for which the Constitution requires a jury trial regardless of the punishment which may be imposed, but gives no indication of what these offenses are. The ultimate question therefore to be decided is when is a defendant entitled to a jury trial by force of the Constitution?

II.

Constitutional requirements for Trial by Jury.

There are two provisions in the Constitution of the United States regarding the right to trial by jury in criminal cases. The first is contained in Article III, Section 2, Clause 3, wherein it is stated that "the trial of all crimes, except in cases of impeachment, shall be by jury"; and the other is found in the Sixth Amendment, which provides "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed."

There is no question raised whatever regarding the facts in this case. Whether the evidence against the defendant Colts was or was not sufficient to justify his conviction, is beside the question. If he was, by force of the Constitution, entitled to a trial by jury, the verdict cannot stand; if he was not entitled to a jury trial, the conviction is valid.

A careful review of all the Federal authorities does not reveal a single federal case in a federal court wherein a defendant was denied, over his demand for such a trial, a trial by jury when charged with a criminal offense. If the offense is a criminal offense, there can be no question but what the defendant is entitled to a trial by jury. The language of the Constitution and of the Sixth Amendment says so in language that is so clear and unequivocal that it is not susceptible of any other interpretation. No case has been found which indicates *when* the Constitution guarantees a trial by jury. In the case of Schick v. United States, 195 U. S. 65, this Court, speaking through Mr. Justice Brewer, said:

> "The truth is, the nature of the offense and the amount of punishment prescribed, rather than its place in the statutes, determine whether it is to be classed among serious or petty offenses, whether among crimes or misdemeanors."

With this as a guide, the matter to be determined is, not only could the defendant Colts be deprived of his liberty for a period of thirty days in spite of his demand for a jury trial, but are there any offenses which may be punished by a sentence up to ninety days in jail without a jury trial?

Counsel for the District of Columbia rely in a great measure on the authority of Schick v. United States, (supra),

wherein the defendant, who was charged with a violation of the Pure Food Laws, having waived a trial by jury, was fined $50.00, the maximum penalty under the Statute for the offense with which he was charged. When an attempt was made to collect the penalty, Schick sought to have his conviction reversed because he did not have a jury trial. Relying on the Schnick case, petitioner, in its brief, says that this Court has declared that Congress may require the trial of petty offenses without a jury. It is urged that this Court has not committed itself to any such ruling. In the Schick case, this court held that the defendant, having waived his trial by jury, the offense being of a petty nature, his waiver would stand. In view of the recent decision by this court in the case of Patton v. United States, decided April 4th, 1930, the waiver would have been binding on the defendant, regardless of whether it was a petty offense or a serious criminal offense of which he had been convicted.

In the case at bar, there is no question of a waiver of a jury trial. The defendant here specifically and emphatically made his demand for a trial by jury.

III

Origin and Value of Trial by Jury.

In the case of Callan vs. Wilson, 127 U. S. 540, is found the following language regarding the meaning of the Third Article of the Constitution, providing for the trial of crimes by jury:

"It is not to be construed as relating only to felonies, or offenses punishable by confinement in the penitentiary. It embraces as well some class of misdemeanors, the punishment of which involves or *may involve the deprivation of the liberty of the citizen.*"

The English-speaking people generally regard their right to a trial by jury as originating by the provisions of Magna Carta, wherein it is said:

"No free man shall be taken or imprisoned, or disseised or outlawed, or will we send upon him, except by the legal judgment of his peers or by the law of the land."

Whether our right to a trial by jury in a criminal case originated here or not, makes no difference. A careful study of the history of Criminal Jurisprudence will disclose the fact that a trial by jury, in one form or another, was known many hundreds of years before Magna Carta.

It is well to refer to the observations of Blackstone in Book III, of his Commentaries, at page 379, regarding the value of trial by jury:

"Upon these accounts the trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law. And if it has so great an advantage over others in regulating civil property, how much must that advantage be heightened when it is applied to criminal cases! But this we must refer to the ensuing book of these commentaries: only observing for the present, that it is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his

property, his liberty, or his person, but by the unanimous consent of twelve of his neighbors and equals. A constitution that I may venture to affirm has, under Providence, secured the just liberties of this nation for a long succession of ages. And therefore a celebrated French Writer, who concludes that because Rome, Sparta, and Carthage have lost their liberties, therefore those of England in time must perish, should have recollected that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury.

"Great as this eulogium may seem, it is no more than this admirable constitution, when traced to its principles, will be found in sober reason to deserve. The impartial administration of justice, which secures both our persons and our properties, is the great end of civil society. But if that be entirely intrusted to the magistracy, a select body of men, and those generally selected by the prince, or such as enjoy the highest offices in the state, their decisions, in spite of their own natural integrity, will have frequently an involuntary bias towards those of their own rank and dignity; it is not to be expected from human nature, that the few should be always attentive to the interests and good of the many. * * *

"But in settling and adjusting a question of fact, when intrusted to any single magistrate, partiality and injustice have an ample field or range in; either by boldly asserting that to be proved which is not so, or by more artfully suppressing some circumstances, stretching and warping others, and distinguishing away the remainder. Here therefore a competent number of sensible and upright jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth and the surest guardians of public justice. For the most powerful individual in the

state will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by twelve indifferent men, not appointed till the hour of trial; and that, when once the fact is ascertained, the law must of course redress it. This therefore preserves in the hands of the people that share which they ought to have in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens. Every new tribunal, erected for the decision of facts, without the intervention of a jury, (whether composed of justices of the peace, commissioners of the revenue, judges of a court of conscience, or any other standing magistrates), is a step towards establishing aristocracy, the most oppressive of absolute governments. The feodal system, which, for the sake of military subordination, pursued an aristocratical plan in all its arrangements of property, had been intolerable in times of peace, had it not been wisely counterpoised by that privilege, so universally diffused through every part of it, the trial by the feodal peers. And in every country on the continent, as the trial by the peers has been gradually disused, so the nobles have increased in power, till the state has been torn to pieces by rival factions, and oligarchy in effect has been established, though under the shadow of regal government; unless where the miserable commons have taken shelter under absolute monarchy, as the lighter evil of the two. And, particularly, it is a circumstance well worthy an Englishman's observation, that in Sweden the trial by jury, that bulwark of northern liberty, which continued in its full vigour so lately as the middle of the last century, is now fallen into disuse: and that there, though the regal power is in no country so closely limited, yet the liberties of the commons are extinguished, and the government is degenerated into a mere aristocracy. It is therefore, upon the whole, a duty which every man

owes to his country, his friends, his posterity, and himself, to maintain to the utmost of his power this valuable constitution in all its rights; to restore it to its antient dignity, if at all impaired by the different value of property, or otherwise deviated from its first institution; to amend it, wherever it is defective; and above all, to guard with the most jealous circumspection against the introduction of new and arbitrary methods of trial, which, under a variety of plausible pretences, may in time imperceptibly undermine this best preservative of English liberty."

IV

What determines when the Constitutional Guarantee attaches.

It has never before been claimed that a defendant charged with a criminal offense in a court under the jurisdiction of our Federal Government, was not entitled to a trial by jury. It cannot be denied by the District of Columbia that the offense with which the defendant was charged was a criminal offense. It is urged however that the offense was of such a petty nature that it should be tried by a summary proceeding, without a jury.

Blackstone's Commentaries, in Book IV, at pages 280, 281 and 282, has this to say regarding summary proceedings:

> "We are next, according to the plan I have laid down, to take into consideration the proceedings in the courts of criminal jurisdiction in order to the punishment of offences. These are plain, easy, and regular; the law not admitting any fictions, as in civil causes, to take place where the life, the liberty, and

the safety of the subject are more immediately brought into jeopardy. * * *

"Another branch of summary proceedings is that before justices of the peace, in order to inflict divers petty pecuniary mulcts and corporal penalties denounced by act of parliament for many disorderly offences, such as common swearing, drunkenness, vagrancy, idleness, and a vast variety of others, for which I must refer the student to the justice-books formerly cited, and which used to be formerly punished by the verdict of a jury in the court-leet. This change in the administration of justice hath, however, had some mischievous effects; as, * * *

"3. A third mischief, which is, that this trust, when slighted by gentlemen, falls of course into the hands of those who are not so, but the mere tools of office. And then the extensive power of a justice of the peace, which even in the hands of men of honour is highly formidable, will be prostituted to mean and scandalous purposes, to the low ends of selfish ambition, avarice, or personal resentment. And from these ill consequences we may collect the prudent foresight of our antient lawgivers, who suffered neither the property nor the punishment of the subject to be determined by the opinion of any one of two men; and we may also observe the necessity of not deviating any further from our antient constitution by ordaining new penalties to be inflicted upon summary convictions."

If the offense is not to be deemed so petty as to justify the trial of the defendant without a jury, the District of Columbia urges that the offense, with which the defendant was charged, was not an indictable offense known to the common law. It is claimed that the offense with which the de-

fendant, Colts, was charged, at most, was no more than a breach of the peace consisting of fast driving so as to endanger the lives and safety of citizens, which was not an indictable offense at common law, and, this not being an indictable offense at common law, the defendant would not have been entitled to a trial by jury at common law, and therefore is not now entitled to a trial by jury. As is said in Blackstone's Commentaries, in Book IV, on page 166:

> "5. To descend next to offenses whose punishment is short of death. Common nuisances are a species of offence against the public order and economical regimen of the state, being either the doing of a thing to the annoyance of all the king's subjects, or the neglecting to do a thing which the common good requires. * * * Of this nature are, 1. Annoyances in highways, bridges, and public rivers, by rendering the same inconvenient or dangerous to pass, either positively, by actual obstructions, or negatively, by want of reparations. For both of these, the person so obstructing, or such individuals as are bound to repair and cleanse them, or (in default of these last) the parish at large, *may be indicted,* distrained to repair and mend them, and in some cases fined. And a presentment thereof by a judge of assize, etc., or a justice of the peace, shall be in all respects equivalent to an indictment."

If a defendant drove an automobile in the manner set out in the information filed in this case, it would be such an offense as would have amounted to a common nuisance at common law, and would therefore have been an indictable offense, and one entitling a defendant to a trial by jury, even at common law.

Again in Blackstone's Commentaries, Book IV, are to be found the following observations:

Page 218:

> "And, indeed, there can be no doubt but that all kinds of crimes of a public nature, all disturbance of the peace, all oppressions and other misdemeanours whatsoever of a notoriously evil example, may be indicted at the suit of the king. * * *

Page 273:

> "The other general business of the leet and tourn was to present by jury all crimes whatsoever that happened within their jurisdiction; and not only to present, but also to punish, all trivial misdemeanours, * * *. The objects of their jurisdiction are therefore unavoidably very numerous: being such as in some degree, either less or more, affect the public weal or good governance of the district in which they arise; from common nuisances, and other material offenses against the king's peace and public trade, down to eaves-dropping, waifs, and irregularities in public commons."

V

Has Congress the power to fix arbitrary limits of punishment as the test for determining the right of a defendant to a trial by jury in a criminal case?

While it is true that so far as the defendant Colts is concerned, the only question herein is whether or not the conviction for the offense charged shall be sustained, it is very seriously urged that this Court should and ought to pass upon the constitutionality of the Act of Congress, which attempts

to deny jury trials in criminal prosecutions, wherein the punishment does not exceed ninety days imprisonment or a fine of $300. This is a very serious question and one that strikes at the very foundation of our liberty. Is Congress authorized to draw a line and say, "Up to this point you shall have no jury trial"? If the Congress is to be permitted to say that up to ninety days, a defendant, in a criminal case, is not entitled to have a jury trial, there is nothing to prevent that same Congress from saying, up to six months, nine months, or a year, there shall be no trials by jury. For instance, if Congress has the authority to draw a line marking the point at which jury trials begin and end, there are innumerable Federal Statutes punishing a great many misdemeanors, especially the National Prohibition Act, that Congress could very summarily enforce, either by reducing the amount of imprisonment for various violations, which might be imposed upon conviction, or increasing the limit up to which a defendant was entitled to a jury trial. As pointed out by Mr. Justice Robb of the Court of Appeals for the District of Columbia, in the opinion he delivered in this case, in the Court below:

> "It would be an anomalous situation indeed if in a civil suit against Colts in the District of Columbia, involving more than $20.00, he could demand a jury trial as of right (7th Amendment) and yet could be deprived of that privilege in a prosecution for a common law offense involving his reputation and liberty."

It is not to be denied that not only the nature or character of the offense is not alone the criterion as to the right of a defendant to a trial by jury; there is also the further element, the punishment which may be prescribed. If ninety days in jail is to be considered a petty offense, it would ap-

pear that the framers of the Constitution placed a greater value on $20.00 than they did upon ninety days of their personal liberty. It is absurd to suggest that any human being places a higher value on $20.00 than on ninety days of his liberty. The observations of this Court in the case of Patton v. United States, above referred to, throw a great deal of light on this particular case. There is quoted therein the remarks of Mr. Justice Brewer, taken from the American Publishing Company vs. Fisher, 166 U. S. 466, as follows:

> "Whatever may be true as to legislation which changes any mere details of a jury trial, it is clear that a statute which destroys this substantial and essential feature thereof is one abridging the right."

Again, in the same opinion is found the following:

> "The record of English and colonial jurisprudence antedating the Constitution will be searched in vain for evidence that trial by jury in criminal cases was regarded as a part of the structure of government, as distinguished from a right or privilege of the accused. On the contrary, it uniformly was regarded as a valuable privilege bestowed upon the person accused of crime for the purpose of safeguarding him against the oppressive power of the king and the arbitrary or partial judgment of the court. Thus Blackstone, who held trial by jury both in civil and criminal cases in such esteem that he called it "the glory of the English law," nevertheless looked upon it as a "privilege," albeit "the most transcendent privilege which any subject can enjoy." Bk. 3, p. 379. And Story, J., writing at a time when the adoption of the Constitution was still in the memory of men then living, speaking of trial by jury in criminal cases said:

" 'When our more immediate ancestors removed to America, they brought this great privilege with them, as their birthright and inheritance, as a part of that admirable common law which had fenced round and interposed barriers on every side against the approaches of arbitrary power. It is now incorporated into all our state constitutions as a fundamental right, and the Consitution of the United States would have been justly obnoxious to the most conclusive objection if it had not recognized and confirmed it in the most solemn terms.' 2 Story, Const. Sec. 1779.

"In the light of the foregoing it is reasonable to conclude that the framers of the Constitution simply were intent upon preserving the right of trial by jury primarily for the protection of the accused. If not, and their intention went beyond this and included the purpose of establishing the jury for the trial of crimes as an integral and inseparable part of the court, instead of one of its instrumentalities, it is strange that nothing to that effect appears in contemporaneous literature or in any of the debates or innumerable discussions of the time. This is all the more remarkable when we recall the minute scrutiny to which every provision of the proposed Constitution was subjected. The reasonable inference is that the concern of the framers of the Constitution was to make clear that the right of trial by jury should remain inviolable, to which end no language was deemed too imperative. That this was the purpose of the third article is rendered highly probable by a consideration of the form of expression used in the 6th Amendment.

" 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury * * *.'

"This provision, which deals with trial by jury clearly in terms of privilege, although occurring later than that in respect of jury trials contained in the

original Constitution, is not to be regarded as modifying or altering the earlier provision; and there is no reason for thinking such was within its purpose. The first ten amendments and the original Constitution were substantially contemporaneous and should be construed in pari materia. So construed, the latter provision fairly may be regarded as reflecting the meaning of the former. In other words, the two provisions mean substantially the same thing; and this is the effect of the holding of this court in Callan v. Wilson, 127 U. S. 540, 549, 32 L. ed. 223, 226, 8 Sup. Ct. Rep. 1301, where it is said:

" 'And we do not think that the Amendment was intended to supplant that part of the third article which relates to trial by jury. There is no necessary conflict between them.'

"Upon this view of the constitutional provisions we conclude that Article 3, Sec. 2, is not jurisdictional, but was meant to confer a right upon the accused which he may forego at his election. To deny his power to do so is to convert a privilege into an imperative requirement. * * *.

"In affirming the power of the defendant in any criminal case to waive a trial by a constitutional jury and submit to trial by a jury of less than twelve persons, or by the court, we do not mean to hold that the waiver must be put into effect at all events. That, perhaps, sufficiently appears already. Trial by jury is the normal and, with occasional exceptions, the preferable mode of disposing of issues of fact in criminal cases above the grade of petty offenses. In such cases the value and appropriateness of jury trial have been established by long experience and are not now to be denied. Not only must the right of the accused to a trial by a constitutional jury be jealously preserved, but the maintenance of

> the jury as a fact-finding body in criminal cases is of such importance and has such a place in our traditions, that, before any waiver can become effective, the consent of government counsel and the sanction of the court must be had, in addition to the express and intelligent consent of the defendant. And the duty of the trial court in that regard is not to be discharged as a mere matter of rote, but with sound and advised discretion, with an eye to avoid unreasonable or undue departures from the mode of trial or from any of the essential elements thereof, and with a caution increasing in degree as the offenses dealt with increase in gravity."

In the brief submitted by the District of Columbia in the Court below, as well also as the brief submitted herein, a great deal of space is devoted to the discussion of the decisions in many State courts, which it is claimed support the position of the petitioner that an offense, such as is here involved, may be tried by a summary proceeding. That this is done in some states is not denied, and that this was true in most of the colonies before the adoption of the Constitution is not denied. However, the unbroken line of decisions in this Court have constantly held that the same limitations do not apply to the various states as are applied to the Federal Government. The Federal Government looks to the Constitution of the United States for its authority to perform its functions. This document contains the powers granted to the Federal Government by the States at the time of its adoption. The very purpose of the Constitution itself was to prevent the Federal Government from taking undue liberties with the citizens of the State. At the time of the adoption of the Constitution, the States were more or less suspicious of a centralized Government and were very care-

ful to protect their citizens against any encroachments on the rights of their citizens. It is therefore suggested that the various decisions cited by petitioner from the State courts have no bearing whatever on this case. That this is so, is well illustrated by the language of Mr. Chief Justice Marshall, in the case of John Barron vs. The Mayor and City Council of Baltimore, reported in 7 Peters, page 243, 32 U. S. 242, wherein he said:

> "The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual States. Each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposes."

VI

The offense with which the defendant was charged is a crime.

The remaining contention of the District of Columbia is that the offense of reckless driving in the District of Colum-

bia is a municipal offense, notwithstanding the fact that the law was enacted by the Congress of the United States, and that Congress has properly treated this offense as a petty offense. We have but to look to Blackstone's Commentatries again for the definition of a crime, Book IV, Page 5, which is as follows:

> "A crime or misdemeanor is an act committed or omitted in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors; which, properly speaking, are mere synonymous terms. Though in common usage, the word "crimes" is made to denote such offenses as are of a deeper and more atrocious character, while smaller faults and omissions of less consequence are comprised under the gentler term of misdemeanors only."

If this is the true test as to what is a crime, the offense charged herein is certainly a crime, and being a crime it comes within the scope of offenses referred to in the Constitution. That there are many or few of these offenses, is of no importance. No one would seriously urge that a defendant be denied a jury trial solely for the purpose of making prosecution convenient to the Government.

In the case of Byars v. United States, 273 U. S. page 28, wherein the question involved appeared to be the violation of the constitutional rights of a defendant with reference to the legality of a search and seizure, this Court made this observation:

> "While it is true that the mere participation in a state search of one who is a federal offcer does not ren-

der it a federal undertaking, the courts must be vigilant to scrutinize the attendant facts with an eye to detect and a hand to prevent violations of the Constitution by circuitous and indirect methods. Constitutional provisions for the security of person and property are to be liberally construed, and 'it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.' Boyd v. United States, 116 U. S. 616; Gouled v. United States, supra, p. 304 (65 L. Ed. 650, 41 Sup. Ct. Rep. 261)." * * *

"The 4th Amendment was adopted in view of long misuse of power in the matter of searches and seizures both in England and the colonies; and the assurance against any revival of it, so carefully embodied in the fundamental law, is not to be impaired by judicial sanction of equivocal methods, which, regarded superficially, may seem to escape the challenge of illegality but which, in reality, strike at the substance of the constitutional right."

It is submitted therefore that the decision in the Court of Appeals of the District of Columbia should be sustained.

Respectfully submitted,

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Attorneys for Respondent.

October, 1930.

SUPREME COURT OF THE UNITED STATES.

No. 96.—October Term, 1930.

District of Columbia, Petitioner, *vs.* William H. Colts. } On Writ of Certiorari to the Court of Appeals of the District of Columbia.

[November 24, 1930.]

Mr. Justice Sutherland delivered the opinion of the Court.

An information filed in the Police Court of the District of Columbia charged the respondent, Colts, with having operated upon various streets, contrary to the statute set forth below, "a certain motor vehicle at a greater rate of speed than twenty-two miles an hour over said public highway[s] recklessly, that is to say at a greater rate of speed than was reasonable and proper, having regard to the width of said public highway[s], the use thereof, and the traffic thereon, in such manner and condition so as to endanger property and individuals." Respondent was arraigned, pleaded not guilty, and demanded a trial by jury. The demand was denied, and he was put upon trial before the judge without a jury and found guilty. Upon writ of error the Court of Appeals of the District of Columbia reversed the judgment, holding that respondent, under the federal Constitution, was entitled to a jury trial. With that conclusion we agree.

The acts of Congress passed for the government of the District provide that prosecutions in the police court shall be on information; that where the accused would be entitled to a jury trial under the Constitution, trial shall be by jury unless waived; and that in cases where the accused would not by force of the Constitution be entitled to a trial by jury, trial shall be by the court without a jury, unless, in cases where the fine or penalty may be more than $300 or imprisonment more than ninety days, the accused shall demand a trial by jury, in which case the trial shall be by jury. D. C. Code (1930), Title 18, c. 4, § 165.

Section 9 of the District of Columbia Traffic Act, 1925, as amended, D. C. Code (1930), Title 6, c. 9, § 246, provides:

"(a) No vehicle shall be operated upon any public highway in the District at a speed greater than twenty-two miles per hour except in such outlying districts and upon such highways as the director may designate. . . .

"(b) No individual shall operate a motor vehicle over any public highway in the District (1) recklessly; or (2) at a rate of speed greater than is reasonable and proper, having regard to the width of the public highway, the use thereof, and the traffic thereon; or (3) so as to endanger any property or individual; or (4) so as unnecessarily or unreasonably to damage the public highway.

"(c) Any individual violating any provision of this section where the offense constitutes reckless driving shall, upon conviction for the first offense, be fined not less than $25 nor more than $100 or imprisoned not less than 10 days nor more than 30 days; and upon conviction for the second or any subsequent offense such individual shall be fined not less than $100 nor more than $1,000, and shall be imprisoned not less than 30 days nor more than one year, and the clerk of the court shall certify forthwith such conviction to the director, who shall thereupon revoke the operator's permit of such individual.

"(d) Any individual violating any provision of this section except where the offense constitutes reckless driving, shall, upon conviction for the first offense, be fined not less than $5 nor more than $25; upon conviction for the second offense, such individual shall be fined not less than $25 nor more than $100; upon conviction for the third offense or any subsequent offense such individual shall be fined not less than $100 nor more than $500, and shall be imprisoned not less than 30 days nor more than one year, and the clerk of the court shall certify forthwith such conviction to the director, who shall thereupon revoke the operator's permit of such individual."

It will be seen that the respondent is not charged merely with the comparatively slight offense of exceeding the twenty-two mile limit of speed, subdivision (a), or merely with driving recklessly, subdivision (b) (1); but with the grave offense of having driven at the forbidden rate of speed and recklessly, "so as to endanger property and individuals."

By § 165 of the D. C. Code, outlined above, the Constitution is made the test—as, of course, it must be—to determine whether the accused be entitled to a jury trial. Article III, § 2, cl. 3, of the Constitution provides that "The trial of all crimes, except in cases of impeachment, shall be by jury." This provision is to be interpreted in the light of the common law, according to which petty offenses might be proceeded against summarily before a magistrate

sitting without a jury. See *Callan* v. *Wilson,* 127 U. S. 540, 557. That there may be many offenses called "petty offenses" which do not rise to the degree of *crimes* within the meaning of Article III, and in respect of which Congress may dispense with a jury trial, is settled. *Schick* v. *United States,* 195 U. S. 65. And see *Natal* v. *Louisiana,* 139 U. S. 621, 624; *Lawton* v. *Steele,* 152 U. S. 133, 141; *State* v. *Rodgers,* 91 N. J. L. 212, 214.

Whether a given offense is to be classed as a crime, so as to require a jury trial, or as a petty offense, triable summarily without a jury, depends primarily upon the nature of the offense. The offense here charged is not merely *malum prohibitum,* but in its very nature is *malum in se.* It was an indictable offense at common law, *United States* v. *John Hart,* 1 Pet. C. C. 390, 392, when horses, instead of gasoline, constituted the motive power. The New Jersey Court of Errors and Appeals, in *State* v. *Rodgers, supra,* has discussed the distinction between traffic offenses of a petty character, subject to summary proceedings without indictment and trial by jury, and those of a serious character, amounting to public nuisances indictable at common law; and its examination of the subject makes clear that the offense now under review is of the latter character.

An automobile is, potentially, a dangerous instrumentality, as the appalling number of fatalities brought about every day by its operation bear distressing witness. To drive such an instrumentality through the public streets of a city so recklessly "as to endanger property and individuals" is an act of such obvious depravity that to characterize it as a petty offense would be to shock the general moral sense. If the act of the respondent described in the information had culminated in the death of a human being, respondent would have been subject to indictment for some degree of felonious homicide. *Nash* v. *United States,* 229 U. S. 373, 377; 1 Whar. Cr. Law, §§ 343 *et seq.,* 353-356; 1 Bish. New Cr. Law, § 313 *et seq.; Story* v. *United States,* 16 F. (2d) 342, 344; *State* v. *Campbell,* 82 Conn. 671, 677; *Mercer* v. *Corbin,* 117 Ind. 450; *Belk et al.* v. *People,* 125 Ill. 584, 589-590; *Kennedy* v. *Way,* Bright. (Pa.) 186, 188. Such an act properly cannot be described otherwise than as a grave offense—a crime within the meaning of the third Article of the Constitution—and as such within the constitutional guarantee of trial by jury.

Judgment affirmed.